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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-second session

SUMMARY RECORD OF THE 33rd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 30 August 1990, at 10 a.m.

Chairman: Mr. TÜRK

later: Mr. TREAT

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The meeting was called to order at 10.20 a.m.

STATEMENT BY THE CHAIRMAN

1. The CHAIRMAN, advising the Sub-Commission of the latest information he had received from the Permanent Representative of Canada regarding the situation at Oka, stated that the evening before, the Canadian army in co-operation with the Mohawks, had begun dismantling the barricades blocking the Mercier bridge and the roads leading to it. Once the operation was completed, the army would remain in the area to provide for the security of commuters until no longer required. Negotiations were proceeding between the representatives of the Government of Canada and the Mohawk population, and the Sub-Commission would be kept informed of their progress.

2. Mr. ALFONSO MARTINEZ said he was pleased to see the operations proving once again that, however delicate a situation might be, a peaceful solution could be arrived at through negotiation.

THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY (agenda item 19) (continued) (E/CN.4/Sub.2/1990/47; E/CN.4/Sub.2/1990/NGO/24)

3. Mr. GUISSE noted that, while the majority of countries had abolished entry visas, virtually all States had subsequently reintroduced them even for a simple visit as a tourist. He found that a retrograde and disturbing move.

4. Mr. DESPOUY warned the Sub-Commission that the draft declaration in document E/CN.4/Sub.2/1990/47 might constitute a step backwards in relation to the regulations in force such as the Inter-American Convention on Human Rights. There was also a gap to be filled in the draft declaration, in that it made no mention of the need to repeal the provisions which, in some countries, included banishment, a punishment dating back to another age.

5. Mr. EIDE said that the Working Group's task had been complicated by the fact that there were two different schools of thought. According to one school, the draft should only seek to give effect to article 13 (2) of the Universal Declaration of Human Rights, whereas the other held that the possibility of entry into a third country should also be discussed. International law, however, made no provision for the latter eventuality and he thought that the draft declaration should be completed by taking article 13 (2) literally, before addressing the issue of access to another country.

6. Mr. ALFONSO MARTINEZ said that he too had observed the different schools of thought during the Working Group's deliberations. There were some who felt that the right to leave a country was a right in itself and it had, therefore, been suggested that in the absence of any international regulations concerning entry into a third country, such entry should be governed by the internal laws of each country. Others considered that the right to leave should be matched by the possibility of entering the country of one's choice. In his opinion, however, while entry into a third country could not in fact be guaranteed, it was unacceptable that a State which a person wished to leave should be able to impede the exercise of that right simply because the third country to which

that person wished to go refused him an entry visa. There were others, like Mr. Despouy, who wanted the draft to include a provision specifying that a State could not compel anyone to leave his country. Lastly, there were still others who wanted the draft to provide for freedom of movement within the borders of a State, the right not to be forcibly removed and the right to remain in one's country.

7. Mr. SUESCUN, referring to the right to enter a country, said that, as far as he knew, the only similar right was the right of asylum. Regarding the right to leave a country, although there were general rules on the subject, they were not respected in many countries, contrary to what some mmembers thought. As a result, whole populations deprived of that right had been driven to revolt, with consequences such as the fall of the Berlin Wall and the Iron Curtain. Every individual should have the right to obtain not only a passport but also an exit visa. The practice whereby a given trade union or party could demand permits should be terminated.

8. He disagreed with linking the right of a person to leave a country to the willingness of a third country to receive him, because the right to leave a country existed in respect of the State which the person was leaving and not of a third State. The right being considered was essentially the entitlement to leave a country.

9. Mr. EIDE remarked that the question was less complex than it appeared. The point at issue was the right to leave a country and the right not to be forced to do so. Problems arose if the right to leave a country was linked to that of entering the territory of another country, a procedure which did not appear appropriate. It was true that the discrimination practised against those who sought to enter a country could be discussed, but that was another matter. There were very few States which had not yet accepted the idea of honouring the right to leave a country, and therefore a positive solution could quickly be found to that problem.

10. The right to freedom of movement within the borders of a State, which was the subject of article 13 (1) of the Universal Declaration of Human Rights, was a very important one and should be dealt with separately. He therefore suggested that the question raised by the application of article 13 (2) should be settled first.

11. Mr. SACHAR, referring to the draft declaration in document E/CN.4/Sub.2/1990/47, said that the expression "brain drain" used in article 4 was too vague; it made it difficult to determine what category of persons was covered and could be used by States as a pretext for depriving some citizens of their right to leave their territory.

12. He felt that the provisions of articles 8 (c) and 9 (a) (ii) could involve a dangerous loss of foreign exchange for some developing countries.

13. Mrs. KSENTINI expressed the view that the right to leave a country should be linked with the conditions of entry into another. Besides the discriminatory measures and the refoulement to which the nationals of developing countries were subjected by the developed countries, there was also the immigration of non-Israeli Jews on a massive scale into the territories occupied by Israel, to the detriment of the fundamental rights of the inhabitants of those territories.

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14. Mr. ALFONSO MARTINEZ pointed out that the right to leave a country posed the problem of selective bans, which was compounded by that of discriminatory restrictions on entry into a third country.

15. Mr. JACK (International League for Human Rights) said that, while the right to leave one's country was no longer a significant problem in view of the recent developments in Eastern Europe, it nevertheless continued to be impeded in many other countries. A normative instrument should be drafted urgently, to guarantee the protection of that right and to provide guidance to countries seeking to make their national laws conform to international standards.

16. His organization welcomed the inclusion in draft article 7 of specific provisions clarifying the circumstances under which limitations might be imposed on the right to leave any country as a means of deterring Government abuse of the limitations clauses. In addition, while international human rights instruments recognized the right to leave and return as fundamental, they did not recognize a corresponding right to enter any country. States should, of course, be urged to institute more humane and equitable immigration policies and to respect the protection measures granted to refugees under international law, such as the right to non-refoulement, although it would be unrealistic to refer to the right to enter any country in draft article 7.

17. He hoped that the Working Group would complete its work the following year and his organization suggested that, when doing so, the Group should use as a model the text of the declaration drafted by the eminent group of legal experts at its meeting in Strasbourg, France, in 1986. The adoption by the Sub-Commission of the present draft, on the basis of the Special Rapporteur's text with the amendments suggested by the experts, would be a vital contribution to international protection of that fundamental right.

18. Mr. Treat took the Chair.

19. Mr. LITTMAN (World Union for Progressive Judaism) said that significant progress had been made in seeking a solution to the problem of the Soviet Jews, or "refuseniks" wishing to leave the Soviet Union, since Mr. Gorbachev had announced to the General Assembly on 7 December 1988 that he would see to it that the problem would be settled in a humane way, with respect for the rights of the individual and universal values. Hence, the solution included regularizing the situation of those "refuseniks" whose right to leave their country was being subject to restrictions based on national security or dependent on the consent of close relatives. Those restrictions were, however, subjected to a restrictive interpretation or even discounted in article 7 (d) and (h) of the draft declaration before the Sub-Commission (E/CN.4/Sub.2/1990/47). It was, therefore, gratifying that the majority of the persons whose cases his organization had brought before the Sub-Commission had been able to settle in another country. Nevertheless, there still remained some whose cases had not yet been settled, which was all the more strange as Jews had been leaving the Soviet Union in ever-increasing numbers since 1987.

20. In that connection, the international community should recognize the major contribution that the first Soviet Jewish dissidents had made to the exercise of fundamental freedoms, in particular the right of everyone to leave any country. However, it was obvious that those who had the right to leave a

country also had the right to enter another country and settle there. Small wonder, then, that 99 per cent of the Soviet Jews emigrated to Israel, where they were warmly welcomed under the fundamental law of return adopted by the Jewish State in 1951. It should be highlighted that those immigrants were not settling in the so-called occupied territories but in Israel, as was their right.

21. Mrs. KOHNS (International Organization for the Elimination of All Forms of Racial Discrimination) said it was simply not true to say that the Soviet Jews who were emigrating to Israel were not taking the place of the Palestinians in the territories occupied since 1967. It was incumbent on the international community to secure the right of the Palestinian people to return to their country, a right that had been asserted for the first time in 1948 by General Assembly resolution 194 (III) and reaffirmed regularly thereafter, for example after the Six-Day War, by Security Council resolutions 237 (1967) and 242 (1967). The exercise of their right of return by the Palestinian refugees did not mean the expulsion of Israeli Jews from their country and their homes but did require compliance with General Assembly resolution 181 (II) of 1947, which guaranteed the rights of minorities that would have resulted from the partition of Palestine. More than 90 per cent of the land inside the 1948-1949 borders was consigned by law to the Jews. At the present time 60 per cent of the land on the West Bank and 30 per cent of the land in the Gaza Strip was allocated to the Jews. It was therefore clear that, far from observing the resolutions and Charter of the United Nations, Israel was continuing its policy of preventing the Palestinian people from exercising their right to return although that had been one of the preconditions for Israel's admission to the United Nations. Denial of that right was a breach of the Universal Declaration of Human Rights and of international humanitarian law.

22. Mr. SAMOURA (International Commission of Health Professionals for Health and Human Rights) said that the African continent was, unfortunately, characterized by poverty and social injustice which prompted such large migratory flows that it had been said of Africa that it was the main producer of refugees. That was compounded by the fact that the African countries had been harder hit than others by successive international economic crises and climatic disasters such as drought, desertification and unprecedented torrential rainfall, that their socio-economic structures were fragile and created institutional instability and coups d'état, and that their problems were aggravated by the development assistance policies of certain international financial institutions. All those external and internal factors rendered the African States incapable of meeting the complex needs of their populations.

23. The Sub-Commission should recommend that African States should apply the high principles of the Lagos Plan of Action for the Implementation of the Monrovia Strategy for the Economic Development of Africa, which appeared to offer them the only opportunity to become wholly self-sufficient. The plan insisted both on the need to involve all the forces of progress and change in the process of development and growth and on the democratization of political, social and economic life as indispensable conditions for achieving the expectations raised in the African countries at independence as well as on the education of the African people in matters of health, especially primary

health care. In that regard, it should be pointed out that the Second International Conference on Assistance to Refugees in Africa (ICARA), organized under United Nations and UNHCR auspices, had adopted a resolution which established a direct link between assistance to refugees and aid to development. Development in Africa would be meaningless unless all the Governments recognized and effectively guaranteed the inalienable rights of all citizens.

24. Mrs. BLANCO (Latin American Federation of Associations of Relatives of Disappeared Detainees - FEDEFAM) said that the draft declaration before the Sub-Commission (E/CN.4/Sub.2/1990/47) constituted an instrument to prevent possible violations of human rights, because the right to leave and return to one's country had been and continued to be violated in many Latin American countries. Some members of FEDEFAM had themselves been refused permission to enter a country where they were to have held a meeting, for example, in El Salvador in 1987 and 1989. Other members had been held against their wishes in countries where they had gone to attend meetings, as had occurred in Uruguay and Peru in June 1990. In February 1990, various representatives of Panamanian organizations had finally been unable to obtain permission to leave their country to attend the forty-sixth session of the Commission on Human Rights.

25. That showed the importance of an instrument such as the draft declaration, because its first article recognized the right to leave and return to a country as a principle to be universally applied. Article 7 (a) rightly reasserted the inviolable character of that right and specified what restrictions could be applied in exceptional circumstances. In that connection, FEDEFAM would like the conditions stipulated in paragraph 7 (a) (ii) to be as few as possible in order to prevent any abuse or too flexible an interpretation. She hoped that the draft declaration could begin to fulfil its protecting function as soon as possible.

26. Mr. SANGGUYE (International Fellowship of Reconciliation) said that, under article 14 of the draft declaration in document E/CN.4/Sub.2/1990/47, for the purpose of exercising the right to leave and to return to a country, the application procedures for obtaining the necessary travel documents should not be burdensome or unreasonably long. In order to obtain permission to leave Tibet, several conditions had to be met which resulted in unnecessary delays, of even as much as two years, in issuing the necessary documents. The situation was made even worse by the overall censorship policy which restricted the flow of information both to and from Tibet. It would appear however that no Tibetan had been authorized to leave Tibet for Nepal within the previous three months and that the access of foreign travellers to Tibet - journalists, in particular - remained heavily restricted.

27. In Tibet, the denial of the fundamental right to leave and return to a country constituted a violation of the right to practise one's religion because some Tibetans were currently unable to obtain permission to go to India to attend religious ceremonies. Those who had obtained permission to travel were sometimes required by the authorities to return to Tibet, as in the case of a 62-year-old man who had been arrested and tortured for four months after his return from a pilgrimage to India in 1985.

28. As a Tibetan who had served as a judge in north-eastern Tibet for six years, he knew that, if he had waited for a passport to be issued to him, he would never have been able to address the Sub-Commission. He had, therefore, decided to leave on foot for Nepal, where the border guards had nevertheless confiscated all his personal belongings.

29. The CHAIRMAN said that the general debate on agenda item 19 had been completed.

30. Mr. Türk resumed the Chair.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

Consideration of draft resolutions concerning agenda item 3 (continued) (E/CN.4/Sub.2/1990/L.4, L.7, L.15, L.18 and L.40)

Draft resolution E/CN.4/Sub.2/1990/L.40

31. The CHAIRMAN, replying to a question from Mr. Alfonso Martínez, indicated that the Sub-Commission had already discussed and taken a decision on the draft resolutions and decisions submitted under agenda item 3. However, it had been agreed that draft resolution E/CN.4/Sub.2/1990/L.40 would be drafted and submitted later, because it was connected with the statement which Mrs. Quisumbing, Chairman of the Commission on Human Rights at its forty-sixth session, had been scheduled to make to the Sub-Commission.

32. Mr. TREAT, introducing draft resolution E/CN.4/Sub.2/1990/L.40, said that, after hearing Mrs. Quisumbing, he had thought it necessary to continue the work of ensuring co-ordination of the post-sessional work of the Commission and the Sub-Commission. It was with that in mind that he had submitted the draft resolution under consideration, which proposed the establishment of a co-ordination group to study ways and means of improving the efficiency of the work of the Sub-Commission and the Commission. It appeared, in fact, that all the members of the Sub-Commission concurred that action should be taken, even if they had not yet come to an agreement on the methodology.

33. Mr. CISSE (Secretary of the Sub-Commission) announced that Mr. Sachar had joined the sponsors of draft resolution E/CN.4/Sub.2/1990/L.40. In the first preambular paragraph of the Spanish version of the draft, the word "Comité" should be replaced by "Comisión".

34. Mr. ALFONSO MARTINEZ said he was sorry that he had not been consulted before the draft resolution had been prepared. Although he had no objection to seeking means to ensure the co-ordination of the work of the Sub-Commission and of the Commission he thought that the draft resolution failed to answer questions concerning the type of mechanism to be established for that purpose: there was no indication as to how the proposed group was to be composed, when it would meet, what its exact mandate would be or how its work would be organized. He would like to have an answer to those questions before making any further comments.

35. Mr. van BOVEN said that he wished the draft resolution to take note of Mrs. Quisumbing's statement to the Sub-Commission. He therefore proposed that Mr. Treat should add a paragraph at the end of the preamble which would read: "Welcoming the statement made to the Sub-Commission by the Chairman of the

commission on Human Rights at its forty-sixth session as a contribution to the constructive efforts being made to co-ordinate the work of those two human rights bodies;".

36. Mr. JOINET expressed the view that the draft resolution was premature. He thought that the Sub-Commission should reflect first on the guidelines proposed by the Commission before taking measures which were too radical and which it might later regret. In his opinion, the proposal to create a standing group was too rigid. He therefore proposed that the Sub-Commission should postpone any decision on the draft until the next session.

37. Mrs. KSENTINI said it was unfortunate that members had not been given enough time to discuss the draft resolution, in which it was proposed that the Sub-Commission would submit proposals to the Commission as to how each of them should co-ordinate their work in the future. In her opinion, Mr. Treat should be requested either to agree that the Sub-Commission would defer a decision on that draft resolution until the next session or to replace operative paragraph 2 by a sentence reading: "Decides to consider the matter at its forty-third session".

38. Mr. HELLER shared the concerns expressed by the previous speakers and agreed that it would be a mistake to adopt the draft resolution as it stood. He therefore supported Mrs. Ksentini's proposal to postpone the decision until the next session.

39. Mr. ILKAHANAF welcomed the fact that the draft resolution sought to create closer links between two human rights bodies and to fill the existing gaps. With regard to Commission resolution 1990/64 concerning the work of the Sub-Commission, he noted that, in the instant case, the Sub-Commission had not had enough time to "give due consideration" to the draft resolution which it was recommending to the Commission for adoption and to "seek the widest possible measure of agreement" on it.

40. Mr. LAGHMARI pointed out that, at its next session, the Commission would discuss the recent resolution adopted by the Economic and Social Council regarding improvement of the Commission's work and would no doubt draw many useful conclusions from it. It would, therefore, be better to take more time to reflect on the best way of improving co-ordination between the Commission and the Sub-Commission before taking a decision on a specific proposal.

41. Mr. DAQDE commended the draft resolution under discussion as a very good initiative but agreed that it would be better for the Sub-Commission to postpone a decision on it until the following year.

42. Mr. TREAT, replying to Mr. Alfonso Martínez, said he regretted that he had not had enough time to consult members and to elicit their proposals before preparing the draft resolution. The wording was deliberately vague because he wanted the Chairmen of the two bodies to have complete freedom to work out the measures to be taken.

43. While he agreed with the amendment proposed by Mr. van Boven and stressed the danger of postponing a decision which was so important for the future work of the Commission and the Sub-Commission, he nevertheless acceded to Mrs. Ksentini's request since all the other members seemed to share her view.

44. The CHAIRMAN said that, if there was no objection, he would take it that the Sub-Commission wished to postpone a decision on draft resolution E/CN.4/Sub.2/1990/L.40 until the next session.

45. It was so decided.

Consideration of draft resolutions and decisions concerning agenda item 4 (E/CN.4/Sub.2/1990/L.26, L.33, L.45, L.48, L.54 and L.62)

46. Mr. PACE (Centre for Human Rights) drew the attention of members to General Assembly resolutions 41/213 and 42/211 approving a new budget process to be followed in the 1990-1991 biennium and providing for a contingency fund of $US 15 million to cover additional expenditure for authorized activities not provided for in the proposed programme budget. With respect to the financial implications of the draft resolutions, he stated that any proposed activities that would involve expenditure exceeding the resources available from the contingency fund could be implemented either through modifications being made to them or through redeployment of resources according to the priority level of those activities. If such an adjustment was impractical, those activities would have to be deferred until a later biennium.

47. With regard to the administrative and programme budget implications of resolutions and decisions recommended by the Sub-Commission for adoption by the Commission at its next session, the nature of the activities should be clearly indicated, including whether they were considered as "perennials", in other words activities whose mandates were subject to renewal after an annual review. Those activities were usually financed from the regular human rights budget, under the terms of Economic and Social Council mandates. If a draft resolution or decision covered a new activity which would require approval by the Economic and Social Council, the required resources could, if available, be provided from the contingency fund. The Commission would decide on, and submit to the Council for its approval, suggestions as to how those resolutions or decisions could be implemented either from existing resources or from the contingency fund, or through modifications of existing activities or termination or postponement of low-priority activities. If a new activity could not be financed in one of those ways, it would have to be deferred until a later biennium.

48. Mr. DESPOUY, speaking on a point of order, asked for the text of Mr. Pace's statement to be distributed to all members for use as a reference when they were discussing the financial implications of the activities proposed in the draft resolutions.

Draft resolution E/CN.4/Sub.2/1990/L.26

49. Mrs. DAES pointed out that the members were fully aware of the financial constraints of the Centre for Human Rights when the Sub-Commission requested assistance for one of its special rapporteurs, as was the case with the draft resolution under consideration, in which Mr. van Boven was requested to prepare a progress report on compensation for victims of gross violations of human rights. She hoped that the draft would be adopted without a vote.

50. Mr. ALFONSO MARTINEZ said that he supported the draft resolution because it would enable Mr. van Boven to fulfil his mandate. He (Mr. Alfonso Martínez) had taken part in the preparatory work of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders currently being held in Havana, whose agenda included the question of compensation for victims of abuse of authority or of human rights violations. He proposed that a reference to that Congress should be incorporated in the draft. Operative paragraph 2 could therefore include the following phrase to be inserted after the words "24 May 1990": "and any relevant decision adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders". He also wished to join the sponsors of the draft resolution.

51. Mrs. KSENTINI said that she also wished to be a sponsor of the draft resolution and proposed an insertion in operative paragraph 2, after the words "a progress report on the subject matter", which would read: "including the provisional plan of the relevant study".

52. Mr. SACHAR said that he also wished to join the sponsors of the draft resolution and drew attention to an unintentional error in the English version of paragraph 2 of the text, where "forty-second session" should read "forty-third session".

53. Mr. CISSE (Secretary of the Sub-Commission) pointed out another mistake in addition to the one noted by Mr. Sachar in the English version of the text. The first preambular paragraph should read "31 August 1989" instead of "31 August 1990". He said that Mr. Joinet's name should be added to the list of sponsors.

54. Mrs. DAES said that she supported the proposed amendments.

55. Mr. PACE (Centre for Human Rights) drew attention to the administrative and programme budget implications (E/CN.4/Sub.2/1990/L.55) of the draft resolution under discussion.

56. Draft resolution E/CN.4/Sub.2/1990/L.26, as orally amended, was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1990/L.33

57. Mr. DESPOUY pointed out that the impressive number of sponsors involved in preparing the draft resolution reflected a keen interest in the relationship between protection of human rights and protection of the environment. That was a fundamental issue which, in his opinion, should be the subject of a separate agenda item.

58. He earnestly hoped that the draft resolution, which should enable Mrs. Ksentini to carry out the study she had already outlined, would be adopted by consensus.

59. Mrs. DAES supported Mr. Despouy's comments and said she wished to be a sponsor of the draft. She also proposed that, in the second and third lines of the last operative paragraph containing the decision proposed to the Economic and Social Council for adoption, the expression "a special rapporteur" should be inserted after the words "endorsement of the appointment of".

60. Mr. SABOIA said that he wished to join the sponsors of the draft.

61. Mr. PACE (Centre for Human Rights) drew attention to the administrative and programme budget implications (E/CN.4/Sub.2/1990/L.58) of the draft resolution under consideration.

62. Draft resolution E/CN.4/Sub.2/1990/L.33, as orally amended, was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1990/L.45

63. Mr. EIDE, introducing draft resolution E/CN.4/Sub.2/1990/L.45 on the protection of journalists, indicated that Mr. Sadi, who had prepared the report on the feasibility of a study on ways and means to extend additional protection and assistance to journalists and mass media personnel, had unfortunately had to leave Geneva unexpectedly and it had not been possible to consult him on the draft or to discuss his report.

64. Mr. van BOVEN wondered whether it was wise to request the continuation of a project which had not been properly discussed, because the body to which the Sub-Commission was accountable would certainly wish to know what was the basis for its request and the Sub-Commission would, unfortunately, not be in a position to reply. It might therefore be preferable to defer consideration of the report and the decision concerning continuation of the study until the following year. He stated further that if a vote was taken on the draft in question he would not participate.

65. Mr. JOINET, seconded by Mr. ALFONSO MARTINEZ and Mr. GUISSE, supported Mr. van Boven's suggestion and added that it would be a good idea if the drafters of the report on freedom of expression could consult with Mr. Sadi because the matter of the protection of journalists was closely linked with that of freedom of expression.

66. Mr. EIDE advised the Sub-Commission that he had consulted the sponsors of draft resolution E/CN.4/Sub.2/1990/L.45 and that they had agreed to defer it until the next session.

67. It was so decided.

Draft decision E/CN.4/Sub.2/1990/L.48

68. Mr. DESPOUY indicated that the draft was being submitted with the assent of the authors of the preliminary report on the right to freedom of opinion and expression. It had not been possible to discuss the report thoroughly at the current session and the purpose of the draft decision was to specify that it should be discussed the following year.

69. He knew, however, that the authors intended to continue a more in-depth study of the subject and submit a more comprehensive report at the next session. He asked, therefore, whether the financial implications of taking such a step could be understood from the draft or whether a sentence should be added to the text requesting the Secretary-General to provide the special rapporteurs with the necessary assistance.

70. Mr. ALFONSO MARTINEZ said that he wished to be included among the sponsors of the draft and requested that, given the importance of the issue, the expression "as a priority" should be inserted after the words "decides to continue".

71. Mr. GUISSE asked whether the draft decision was really necessary because it was self-evident that since it had not been possible to discuss the report at the current session, it would have to be considered at the next one.

72. Mrs. KSENTINI felt that the wording of the draft was not very clear, because if it said that the Sub-Commission decided to continue consideration of "this report", the reference there was only to document E/CN.4/Sub.2/1990/11. However, in the present case, as Mr. Guissé had observed, it was obvious that it would be discussed the following year, that there would be no financial implications and that there would be no need to request the Secretariat's assistance. On the other hand, if the intention was to make a more thorough study of the question and request the special rapporteurs to submit a revised or updated report at the next session, such a decision would have financial implications because the Secretariat's help would have to be solicited. She asked to be included among the sponsors of the draft.

73. Mrs. BAUTISTA agreed with Mrs. Ksentini that, given the importance of the issue, the study should be continued and amplified. She therefore proposed that the wording of the draft decision should be amended and that the last part of the sentence, beginning with the words "and decides to continue consideration" should be replaced by "and decides that consideration of this question should be continued and developed in a revised or final report which it will consider at its forty-third session under agenda item 4, 'Review of further developments in fields with which the Sub-Commission has been concerned'".

74. Mr. JOINET, speaking in his capacity as author, with Mr. Türk, of the report in question, confirmed that if the Sub-Commission merely wanted to continue consideration of the report which had been referred to it at the current session, there would be no problem and, of course, no financial implications. It would, of course, be quite a different matter if a final report or a revised version was required.

75. Mr. DESPOUY pointed out that the draft decision submitted concerned only the report that should have been considered at the current session. However, seeing that the experts who had taken the floor on that point had spoken of continuing the study and requesting an updated report, he wished consideration of the draft to be temporarily suspended in order to amend the text and give the Secretariat an opportunity to work out the financial implications.

76. Mr. ALFONSO MARTINEZ thought that an amendment of the text was not necessary because it was clear that the Sub-Commission wished to continue discussion of the question. Besides, in order to avoid financial implications, the Sub-Commission could decide to have a thorough discussion of the subject at its next session and to request the authors to draft not a second report but simply a supplementary working paper.

77. Mr. JOINET pointed out that in the present report, the authors had dealt mostly with methodology but that if the Sub-Commission was asking them to make a substantive study of the issue, they would have as much work to do as for the first report.

78. The CHAIRMAN said that, if there was no objection, he would take it that the Sub-Commission wished to defer a decision on draft decision E/CN.4/Sub.2/1990/L.48 until a later stage.

79. It was so decided.

Draft decision E/CN.4/Sub.2/1990/L.54

80. Mr. LAGHMARI, introducing the draft decision concerning a World Conference on Human Rights, pointed out that in its resolution 44/156, the General Assembly had considered that it would be desirable to convene a world conference on that subject. Activities for that purpose were envisaged, and non-governmental organizations had already given some thought to objectives that those responsible for preparing the Conference should set themselves. Because document E/CN.4/Sub.2/1990/NGO/3 contained some interesting proposals on the subject, the sponsors of the draft decision considered it advisable to recommend that that document should be studied within the framework of the definition of objectives and modalities of the proposed conference.

81. Mr. DESPOUY said that he wished to join the sponsors of the draft decision. The Sub-Commission should suggest that, when organizing the conference, the Secretary-General should take into account the contribution which the experts of the Sub-Commission could make.

82. Mr. van BOVEN supported Mr. Despouy and added that, if memory served him right, the General Assembly resolution had invited all the human rights bodies to make comments and offer their views on the desirability of convening such a conference. For reasons unknown to him, that resolution had not, however, been expressly brought to the attention of the Sub-Commission. He therefore welcomed the fact that a non-governmental organization had submitted a helpful communication on the subject, which would thus enable the Sub-Commission to make an indirect contribution, and he hoped that the Sub-Commission would have an opportunity to say what other contributions it could make.

Draft decision E/CN.4/Sub.2/1990/L.54 was adopted without a vote.

83. Mr. van BOVEN, referring to the report of the Working Group on agenda item 6, which had not yet been distributed but would be issued as document E/CN.4/Sub.2/1990/14, said he wished to make sure that it would, in fact, be considered as a document of the current session and serve as a reference document in discussions on the item.

84. The CHAIRMAN stated that the report of the Working Group on agenda item 6 would be considered as a document of the current session and would serve as a basis for discussion.

The meeting rose at 1 p.m.

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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-second session

SUMMARY RECORD OF THE FIRST PART* OF THE 34th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 30 August 1990, at 3 p.m.

Chairman: Mr. TURK

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Consideration of draft resolutions and decisions (continued)

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* The summary record of the second part of the meeting appears as document E/CN.4/Sub.2/1990/SR.34/Add.1

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GE.90-13597/2368B

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

Review of further developments in fields with which the Sub-Commission has been concerned (agenda item 4) (continued) (E/CN.4/Sub.2/1990/L.48)

Draft decision E/CN.4/Sub.2/1990/L.48

1. Mr. DESPOUY, introducing the draft decisions, said that members felt that the preliminary report on the right to freedom of expression needed to be updated. He therefore proposed to revise the draft decision as follows: the words "continue consideration of this" should be replaced by "give priority consideration to the updated"; and the following wording should be added at the end of the text after the word "concerned": "and requests the Secretary-General to extend to the authors the assistance necessary to fulfil their mandate." He hoped that the draft decision, as revised, would be adopted by consensus.

2. Mrs. DAES asked to become a sponsor of the revised draft decision.

3. The revised draft decision E/CN.4/Sub.2/1990/L.48 was adopted without a vote.

Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particular reference to colonial and other dependent countries and territories: report of the Sub-Commission under Commission on Human Rights resolution 8 (XXIII) (agenda item 6) (continued)
(E/CN.4/Sub.2/1990/L.19, 21, 23, 24, 32, 34 and 35)

Draft resolution E/CN.4/Sub.2/1990/L.19

4. Mrs. DAES, introducing the draft resolution, said that the Sub-Commission would pay a tribute in the draft resolution to the memory of Professor Kazem Rajavi who had been assassinated a few months earlier in Switzerland. Professor Rajavi had been a dedicated human rights defender and activist who had made a considerable contribution to the work of the United Nations in the field of human rights. No knowledge was available as to who had assassinated him. But in operative paragraph 2, the Sub-Commission would strongly condemn all asssassinations for political purposes. The Special Representative, Mr. Galindo Pohl, would be invited to include in his next report any information available to him on the investigation of the assassination.

5. She expressed the hope that the draft resolution would be adopted without a vote.

6. Mr. CISSE (Secretary of the Sub-Commission) said that the name of Mrs. Bautista should be deleted from the list of sponsors.

7. Mr. CAREY said that he supported the draft resolution whole-heartedly but would like to add the words "or threat of assassination" in operative paragraph 2 after "every assassination" and the words "or other persons" after "dissidents" in the same paragraph.

8. The CHAIRMAN requested that Mr. Ilkahanaf should be added to the list of the original sponsors of the draft resolution.

9. Mr. JOINET asked for his name to be deleted from the list of sponsors of the draft resolution.

10. Draft resolution E/CN.4/Sub.2/1990/L.19, as amended, was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1990/L.21

11. Mr. EIDE, introducing the draft resolution, said that it concerned Cambodia, a country with the worst record of violations of human rights.

12. The situation in Cambodia was a spill-over from the war in Viet Nam. Following the settlement of that war, the most cruel period in Cambodian history had ensued when, from 1975 to 1978, the Khmer Rouge had perpetrated horrendous violations of human rights. During that period, more than 1 million persons had been killed. Next had come invasion by Viet Nam and further serious violations of human rights.

13. Recently however the climate had changed; Viet Nam had withdrawn to a large extent and a new political agreement had been reached. The Khmer Rouge, however, were ready to seize power by military force. They had recently derailed a train on which there had been a large number of students who had then been massacred.

14. One purpose of the draft resolution was to address violations of human rights, mainly of refugees in the border zones. It would also appeal to all States, in accordance with General Assembly resolution 3074 (XXVIII) of 3 December 1973, to take all steps to detect, arrest, extradite or bring to trial those who had been responsible for crimes against humanity committed in Cambodia.

15. The present coalition Government was in fact being blackmailed by the Khmer Rouge which had no prospects of success in peaceful elections but was well organized in military terms to stage a coup. The overall situation was that without the Khmer Rouge, Viet Nam would retain control of the country; the Khmer Rouge was the alternative.

16. Following informal consultations, the sponsors, notwithstanding serious reservations, had decided not to press for a vote but to leave the issue in the hands of the Security Council which was already dealing with the issue of Cambodia.

17. The CHAIRMAN announced that draft resolution E/CN.4/Sub.2/1990/L.21 had been withdrawn by the sponsors.

Draft resolution E/CN.4/Sub.2/1990/L.23

18. Mrs. PALLEY, introducing the draft resolution, proposed the following amendments. In the last preambular paragraph, the phrase following "rights" should read "to equality of women" and the remainder of the paragraph should be deleted. The following new preambular paragraph should be added: "Noting that the situation of the Baha'i in the Islamic Republic of Iran continues to

be uncertain,". In the second line of operative paragraph 4 the words "including the situation of minority groups such as the Baha'i" should be inserted before the phrase "at its forty-third session."

19. Mr. Galindo Pohl's report had been low-key but he had nevertheless found many violations of human rights in the Islamic Republic of Iran. Subsequent to Mr. Galindo Pohl's visit serious violations of human rights had continued. A government spokesman had announced that 1,200 people had been executed and that other executions had been scheduled. There were many cases of arrests of women for non-veiling and their punishment by whipping. The human rights situation continued to be grave and she, therefore, on behalf of the sponsors, commended the draft resolution to the Sub-Commission.

20. Mr. CISSE (Secretary of tne Sub-Commission) said that the name of Mrs. Bautista should be deleted from the list of sponsors.

21. Mr. ILKAHANAF welcomed the deletion of the last phrase of the last preambular paragraph. If the phrase had not been deleted, there would have been serious repercussions in the Islamic Republic of Iran.

22. Mrs. BAUTISTA said that she had very strong feelings of sympathy for her fellow countrymen whose poverty had forced them to go to other countries to seek employment. Many such people were currently caught in the Gulf conflict. It was a matter of great concern to her that they were in an exposed position and financially helpless. She had been informed by her Government that the Government of the Islamic Republic of Iran had granted them the right of transit. In recognition of the compassion extended by the Islamic Republic of Iran to thousands of her fellow countrymen, she had decided to withdraw as a sponsor and would not vote on the draft resolution.

23. Mr. GUISSE said any reference to choice of clothing in the draft resolution would represent intrusion into religious and cultural practices in the Islamic world. The practice in regard to clothing derived from Islam. The Sub-Commission should be careful in speaking of religious practices. He suggested that the last preambular paragraph should be withdrawn.

24. Mrs. PALLEY, speaking on a point of order, said that the last preambular paragraph would refer only to the equality of women. All references to clothing would be eliminated.

25. Mrs. KSENTINI said that there was a total lack of consistency between the draft resolution and Commission on Human Rights resolution 1990/79. The resolution of the Commission had been based on the report of the Special Representative who had been able to visit Iran. She could not accept the text of the draft resolution which took no account of positive developments in that country. The Government of the Islamic Republic of Iran had accepted the visit of the Special Representative and the continuation of his mandate. The draft resolution would close the door on future co-operation between the Sub-Commission and the Government. She therefore proposed the following alternative operative paragraph as operative paragraph 3:

> "Welcomes the decision of the Government of the Islamic Republic of Iran to invite the Special Representative to visit that country and the co-operation provided by the Government of the Islamic Republic of Iran in the course of the visit, as well as its commitment to continue the co-operation."

26. Mr. KHALIL recalled that Commission on Human Rights resolution 1990/79 had welcomed the co-operation provided by the Government of the Islamic Republic of Iran in the course of the visit by the Special Representative of the Commission and the fact that the Government had extended an invitation for a further visit. He was therefore surprised that the sponsors of draft resolution E/CN.4/Sub.2/1990/L.23 had used extraneous sources of information as the basis for their text.

27. He was glad, however, that Mrs. Palley had redrafted the third preambular paragraph, for the original wording referred to a matter that went beyond the polical context.

28. The CHAIRMAN drew attention to the opinion by the Legal Counsel that a decision to vote by secret ballot ruled out explanations of vote under rule 60 of the rules of procedure.

29. Mr. ALFONSO MARTÍNEZ said that in view of the adoption of resolution 1990/79 by the Commission on Human Rights, it would have been advisable for the sponsors to have discussed the text of the draft resolution with all colleagues.

30. He was surprised at the difference between the tone of operative paragraph 1 of the draft resolution and that of Commission resolution 1990/79, since the situation in the Islamic Republic of Iran had not changed greatly since the adoption of that resolution in March 1990. Moreover, operative paragraph 3 of the draft resolution was quite unnecessary.

31. In accordance with rule 57 of the rules of procedure he requested a vote on draft resolution E/CN.4/Sub.2/1990/L.23. Had he been allowed an explanation of vote, he would have said that he would vote against the draft resolution.

32. Mrs. MBONU said that the Sub-Commission must encourage Governments to co-operate; it should not close any half-opened doors. She suggested that the sponsors should acknowledge the fact that the Government of the Islamic Republic of Iran had decided to co-operate with the Commission on Human Rights by inviting its Special Representative to visit the country.

33. Mr. EIDE observed that, as an independent expert, he was not obliged to have the same opinion as the Commission on Human Rights, a political body. He made his own assessments on the basis of all available information, including that provided by the Special Representative, in whose report, however, weaknesses had been pointed out.

34. Were Mrs. Ksentini's amendment to be adopted, he would like to include a further amendment immediately following it, reading: "Expresses regret, however, that serious obstacles appear to have been placed in the way of persons or groups which sought to provide information on violations of human rights".

35. He reminded members that the call for the extra-legal execution of Salman Rushdie and those associated with him still stood, which was another indication that problems in the Islamic Republic of Iran had not yet been solved.

36. Mrs. KSENTINI said that she did not consider the Commission's decisions essentially political or that her proposed amendment was a political one. Moreover, every expert on the Sub-Commission was independent.

37. Mr. EIDE explained that his point was merely that the members of the Sub-Commission were not bound to hold the same opinions as the Commission. The independence of the experts on the Sub-Commission was not in doubt.

38. Mr. JOINET found the text of the draft resolution fairly balanced, as it mentioned the deteriorating situation of human rights in the Islamic Republic of Iran since the visit of the United Nations Special Representative. He was in favour of acknowledging the co-operation of States.

39. Mrs. PALLEY said that the sponsors would be happy to accept the amendments by Mrs. Ksentini and Mr. Eide.

40. Although Mr. Alfonso Martínez had contended that there had been no major changes in the Iranian situation since the adoption of Commission resolution 1990/79, much information had been received from non-governmental organizations on the basis of which it was perfectly proper to express the Sub-Commission's deep concern at the deteriorating situation of human rights in the Islamic Republic of Iran. The language adopted by the Special Representative and the Commission in its resolution had been designed for the very worthwhile purpose of facilitating dialogue.

41. She apologized for the fact that time constraints had prevented her from consulting all members of the Sub-Commission on the text of the draft resolution.

42. Mr. TABATABAEE (Observer for the Islamic Republic of Iran) recalled that the consideration of so-called violations of human rights in his country had been initiated by the Sub-Commission in 1980. Since then many one-sided and politically motivated resolutions had been adopted by different United Nations organs on the basis of false and misleading accusations and allegations received through members of groups involved in terrorist activities inside the country while it was engaged in a conflict to defend its sovereignty and integrity.

43. In all cases his Government indicated to the relevant body that such resolutions, based on ulterior motives, were irrelevant and that once that political game had been brought to a halt, the Islamic Republic of Iran would adopt a positive and constructive attitude.

44. Following extensive efforts by the Commission and his Government, full co-operation had been extended to the Special Representative of the Commission, and he had made his first visit to the Islamic Republic of Iran. His Government had formally asked for an extension of that visit but Mr. Galindo Pohl had not been able to comply with that request, due to constraints of time. In his report he had ruled out many allegations that had been repeatedly levelled against governmental and other dignitaries of the Islamic Republic of Iran, including the fact that political prisoners had been executed under false charges of drug-trafficking. Surprisingly enough, he had also met people whose names had been given by terrorist groups as executed political prisoners. On the basis of his report a consensus resolution had been adopted for the first time by the Commission on Human Rights at its forty-sixth session.

45. His Government was in the process of finalizing Mr. Galindo Pohl's second visit during which he wished to look into some detailed allegations. His Government had also invited the International Committee of the Red Cross to visit prisons in accordance with his recommendation. The spirit of co-operation was valuable and promising. Amid all those positive developments his delegation regretted that the Sub-Commission, influenced by misleading and false allegations from terrorist groups, still wished to insist on unfounded accusations.

46. The tone and language of the draft resolution ran counter to the goals and objectives of the Commission on Human Rights on the same subject and the Islamic Republic of Iran would not be responsible for any consequent adverse effect on the existing atmosphere of co-operation in the Commission on Human Rights with respect to the case of Iran.

47. His delegation would have very much liked the Sub-Commission to show its support for the achievements of the Commission on Human Rights, but apparently some circles within the United Nations system wished to follow a constant line of exerting political pressure. The Islamic Republic of Iran, while protesting against such a selective approach, flatly rejected all unfounded allegations presented formally in the Sub-Commission, which could only discredit the United Nations system.

48. The CHAIRMAN recalled that the sponsors of draft resolution E/CN.4/Sub.2/1990/L.23 had accepted the two amendments proposed. In accordance with the Sub-Commission's earlier decision, the vote would be taken by secret ballot.

49. At the invitation of the Chairman, Mrs. Ksentini and Mr. Eide acted as tellers.

50. A vote was taken by secret ballot.

51. Draft resolution E/CN.4/Sub.2/1990/L.23, as amended, was adopted by 14 votes to 5, with 5 abstentions.

Draft resolution E/CN.4/Sub.2/1990/L.24

52. Mrs. MBONU, introducing the draft resolution, said that it differed from the text adopted by the Sub-Commission in previous years in that it took into account recent developments in South Africa. The fourth, fifth, sixth and seventh preambular paragraphs were new, as were operative paragraphs 3, 4, 5 and 6.

53. Operative paragraph 13 should be amended by the inclusion of the word "recently" between the words "have" and "established".

54. In view of the large number of sponsors, she hoped that the draft resolution could be adopted without a vote.

55. Draft resolution E/CN.4/Sub.2/1990/L.24 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1990/L.32

56. Mr. HELLER, introducing the draft resolution, said that in the preambular paragraphs the Sub-Commission took note of the fact that although the Government of Guatemala had taken legal measures to promote respect for human rights and fundamental freedoms and the functioning of democracy, situations characterized by violations by groups or sectors in authority persisted. The Sub-Commission then indicated its concern about the situation of the indigenous population and the need for the Government of Guatemala to intensify its efforts to create the conditions that would enable the mainly indigenous refugees to return to their places of origin with full guarantees for their security and respect for the exercise of their human rights.

57. In the operative paragraphs the Sub-Commission exhorted the Government of Guatemala, inter alia, to intensify its efforts to ensure respect for the human rights and fundamental freedoms of its citizens and to adopt practical measures to improve the economic, social and political conditions of the indigenous peoples. It encouraged the Government to continue to support the process of national reconciliation and called on all the parties concerned to continue the talks established under the Oslo Agreement. Finally, it emphasized the importance of the independence of the judicial system in the effective protection of human rights and in ensuring that persons responsible for violations were brought to trial and punished, and stressed the need to provide assistance in the field of human rights.

58. Mr. GUISSE said that he wished to become a sponsor of the draft resolution.

59. Draft resolution E/CN.4/Sub.2/1990/L.32 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1990/L.34

60. Mrs. KSENTINI, introducing the draft resolution, said that it was based mainly on the relevant resolutions of the United Nations and the Security Council and on reports of the United Nations, in particular the Special Committee to Investigate Israeli Practices affecting the Human Rights of the Population of the Occupied Territories, the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, and the World Health Organization, as well as on the press communiqués of the International Committee of the Red Cross. She drew attention to its salient features and read out the relevant parts of the last preambular paragraph and operative paragraphs 2, 3, 5, 6, 7 and 8.

61. Mrs. PALLEY said that in 1988 she had explained her position regarding certain terms which had enabled her to vote for an almost identical draft resolution. In 1989 she had abstained, because she had thought that the language was too strong and was inappropriate, in that it nowhere recognized the right of the State of Israel to exist within its 1948 boundaries. The present draft resolution was one on which she was sure that, had there been consultations, there would have been unanimity in the Sub-Commission, as in the case of the draft resolution adopted on South Africa. She hoped that there would be consultations on a future occasion.

62. In view of the language, she would unfortunately have to abstain in a vote on draft resolution E/CN.4/Sub.2/1990/L.34.

63. Mr. van BOVEN said that he would, despite serious reservations, concur in the adoption of the draft resolution without a vote. He had also had misgivings over previous draft resolutions and in 1989 had submitted an amendment.

64. He noted some improvement in the present draft resolution, but had reservations about the disproportionate emphasis placed on the present situation in comparison with other human rights situations, in particular some of the wording, for example the use of the word "Condemns" in operative paragraph 7. That word had been used in the resolution already adopted on South Africa, but in respect of practices, whereas in the present draft resolution it referred to a country or a Government.

65. He would concur in the draft resolution's adoption without a vote for two reasons. In the first place, the sponsors had included some elements which he considered important and on which he had insisted the previous year. Secondly, he was becoming increasingly impatient with the occupation and the Israeli Government's consistent refusal to recognize the applicability of the Geneva Conventions. The occupation was becoming a de facto situation which was unacceptable.

66. Mr. CAREY requested a vote.

67. Mrs. KSENTINI drew attention to a technical error in operative paragraph 9: in the third line the word "occupied" should be inserted before "Arab".

68. The CHAIRMAN reminded the Sub-Commission that the vote on the draft resolution would be taken by secret ballot.

69. At the invitation of the Chairman, Mr. Eide and Mrs. Ksentini acted as tellers.

70. A vote was taken by secret ballot.

71. Draft resolution E/CN.4/Sub.2/1990/L.34 was adopted by 18 votes to 1 with 4 abstentions.

Draft resolution E/CN.4/Sub.2/1990/L.35

72. Mr. van BOVEN, introducing the draft resolution, said that it reflected in a moderate fashion the many expressions of concern voiced during the debate. There had in fact been constant concern about the human rights situation in Iraq, and it had been aggravated by recent events, especially the occupation of Kuwait. He drew attention in particular to the second, third and fourth preambular paragraphs and to operative paragraph 4.

73. The Sub-Commission, as a human rights body, should focus on the human rights and humanitarian dimensions of the problem and it was the considered opinion of the sponsors of the draft resolution that it had a duty to act.

74. Mr. TREAT endorsed what Mr. van Boven had said. In view of the significant events that had taken place since publication of the draft resolution and had produced unprecedented expressions of revulsion and repugnance, the Sub-Commission, above all other bodies, was called upon

to make a firm statement, particularly bearing in mind the situation of diplomatic personnel. He therefore proposed that the following paragraph should be added to the preamble: "Horrified by the statement of President Saddam Hussein that innocent civilians will be moved to sensitive military areas in defiance of international law, disturbed that diplomatic personnel are being detained without food or water or electricity, in total disregard of basic humanitarian considerations".

75. He also proposed the addition of the following operative paragraph: "Recommends further that the Secretary-General be requested to express to President Saddam Hussein the deep concern of this body at the violations of international law".

76. Mr. TIAN JIN said that he was opposed to the invasion of Kuwait by Iraq and in favour of an immediate total and unconditional withdrawal. The sovereign independence and territorial integrity of Kuwait should be restored and respected, and the Government of Iraq should guarantee the safety and freedom of foreign nationals in Kuwait and Iraq and allow them to leave the country with all speed. The Gulf crisis should be resolved by peaceful means and the Government of Iraq should respect the human and fundamental rights of the Iraqi people.

77. Regarding the allegations in the draft resolution of violations of human rights in Iraq, he had no reliable official information and would therefore abstain if a vote were taken on the draft resolution.

78. Mr. JOINET appealed to Mr. Treat to withdraw his amendment, not because of the substance, but because the draft resolution was one of the most sensitive on the Sub-Commission's agenda. Achieving a balance had been very difficult and he was afraid that any effort to go beyond the present text would diminish the results.

79. Mr. YIMER suggested that the word "carefully" at the end of the first line of operative paragraph 4 should be deleted as being inappropriate in addressing the Sub-Commission's parent body.

80. The CHAIRMAN said that he understood that the sponsors accepted the amendment.

81. Mr. DESPOUY asked to be included among the sponsors of the draft resolution. He supported Mr. Joinet's appeal. While understanding Mr. Treat's concern, he felt that it would be presumptuous, and not very helpful, to request the Secretary-General to convey a message from the Sub-Commission when he was engaged in a very sensitive mission in the Gulf region. He urged Mr. Treat to reconsider his amendment.

82. Mrs. KSENTINI, while opposed to the occupation of Kuwait and in favour of immediate and unconditional withdrawal and the restoration of Kuwait's integrity and independence, wondered whether a resolution on a country where the situation was explosive would help the problem. She agreed with Mr. Despouy's view.

83. The draft resolution spoke of many problems but omitted the equally important one of the humanitarian aspects of the sanctions taken against Iraq. In her own view, general sanctions, especially on basic essentials and

medicines, could cause untold unnecessary suffering to innocent civilian populations. She therefore proposed that a paragraph on the following lines should be added to the preamble: "Profoundly concerned at the fact that the sanctions laid down by the Security Council against Iraq could cause untold suffering to innocent civilian populations in that they were deprived of essential items and medicines,".

84. She also proposed the addition of an operative paragraph on the following lines: "Urgently appeals to those who take part in sanctions against Iraq, in accordance with Security Council resolution 661 (1990), not to deprive innocent civilian populations of essential items and medicines".

85. Mr. EIDE said that a great many things could be added to the draft resolution, including the evidence, now confirmed, that chemical weapons had been used against Halabja, but the sponsors had been careful not to labour the question. He therefore agreed with the appeal to Mr. Treat not to go beyond what was in the draft resolution.

86. In connection with the appeal for foreigners to be allowed to leave, there was a tendency to believe that foreigners were essentially Westerners and that it was a tug of war between Westerners and the Government of Iraq. However, during the present session, many people had told him of the situation of nationals from entirely different parts of the world, such as Asia and Central and Eastern European countries, who had nothing to do with the basic conflict but were nevertheless in exactly the same predicament, and had said how important the draft resolution was for their nationals.

87. With regard to Mrs. Ksentini's amendments, he too was concerned that sanctions should not be conducted in a way that would cause undue suffering to the occupied Kuwaiti population or to the civilian population in Iraq, which would include the Kurds, who could certainly not be blamed for what Saddam Hussein was doing. However, Security Council resolution 661 (1990) made an explicit exception to the trade embargo.

88. He therefore proposed the inclusion of an additional preambular paragraph reading:

> "Noting that in Security Council resolution 661 (1990) an exception from the trade embargo has been made for essential medicines and, in humanitarian circumstances, foodstuffs,".

89. Mr. ILKAHANAF said that he had no problem in accepting all the operative paragraphs, but the third preambular paragraph caused him some trouble because there was no conclusive evidence that Kurds were living in camps or that a part of the Shi'a population in the south had been forcibly displaced. He proposed that the paragraph should be deleted.

90. Mr. ALFONSO MARTÍNEZ recalled that he had referred earlier to the problem of the consequences for human rights of the use of force in international relations. It was very important to bear that in mind with regard to the recent events in the Gulf area. Obviously, any use of force in international relations had grave political consequences; it could lead to the disappearance of States or to the overthrow of Governments. The use of force should therefore be condemned everywhere; countries other than Kuwait had been invaded, too, but the international response had not been the same.

91. The text before the Sub-Commission was unbalanced. With regard to the third preambular paragraph, there was no proof of the Kurdish camps or of the forced displacement of part of the Shi'a population. He also had serious reservations regarding the appointment of a special rapporteur, as recommended in operative paragraph 4. That would lead to more problems than it would solve. The text of the draft resolution was based on humanitarian considerations, so it should reflect not only what the Security Council had already decided but also the view that an embargo on foodstuffs and medicine that reduced the civilian population to hunger was totally unacceptable.

92. The amendments proposed by Mr. Treat only increased his dissatisfaction with the text. With regard to what Mr. Eide had said, it was clear that not all the foreigners being held were Westerners, but the press was certainly placing much more emphasis on the situation of Europeans and North Americans than on that of people from other parts of the world. He requested that a vote be taken on the draft resolution.

93. Mr. van BOVEN said that it was regrettable that the draft resolution should have given rise to such a lengthy debate, since it had been circulated at an early stage. Moreover, he was a little surprised that Mr. Treat, being a sponsor, should have put forward amendments without consulting the other sponsors. It had been suggested that the Secretary-General should be involved. That was unwise, since it would make the Secretary-General's position much more complicated. He hoped that Mr. Treat would not insist on his amendments and that all the other amendments would not be put to a vote. The only change that should be made should be the deletion of the word "carefully".

94. Mr. SUESCÚN MONROY supported Mr. van Boven. He proposed that all persons who had submitted amendments be invited to withdraw them, except in the case of the deletion of the word "carefully".

95. Mr. KHALIL said that the members of the Sub-Commission were probably unanimous with regard to the invasion of Kuwait, but more and more amendments were being submitted to the draft resolution under consideration. He wondered what the adoption of a resolution by the Sub-Commission would achieve. Everything that was needed to be done had already been done. The Sub-Commission had already adopted a decision, so the outside world knew that it had taken a stand on two very important points - the release of the foreigners being held in Iraq and Kuwait, and the exclusion of medicines and necessary food from the embargo. Further action by the Sub-Commission would not be taken as seriously as the measures which it had already adopted.

96. Mr. JOINET appealed to Mrs. Ksentini to withdraw her amendment. It had been difficult to achieve a balanced text, and the text before the Sub-Commission should not be controversial, since it was based on Security Council resolution 661 (1990).

97. Mrs. PALLEY noted that it had already been made clear that the text had been prepared on the basis of broad consultations. She would have proposed an amendment concerning the possible future use of chemical and biological weapons, but she had refrained from doing so because she considered that the text before the Sub-Commission was logical in that it dealt with the present and the immediate past, and not with the future. All States were acting in

reliance on Security Council resolution 661 (1990), which met Mrs. Ksentini's point because it contained a specific provision relating to foodstuffs and medicines. She therefore hoped that the amendments would be withdrawn.

98. A great deal of evidence had been supplied by non-governmental organizations regarding the displaced Kurds and the forced displacement of part of the Shi'a population. Some three weeks previously the representative of Iraq had mentioned the establishment, for security reasons, of a 30 km zone along the border, whose residents had been moved. Obviously housing could not have been available for such a large number of people, and they had had to go into camps.

99. The CHAIRMAN, noting that a number of speakers had requested the authors of amendments to withdraw them, inquired whether they were willing to do so.

100. Mr. ILKAHANAF said that he wanted a vote to be taken on his amendment.

101. Mr. TREAT said that he understood the motives and some of the arguments of his colleagues, but a number of irrelevant issues had been brought up. His amendments had nothing to do with the use of force or with whether the persons being abused in Kuwait and Iraq were Europeans, Asians, Africans or Americans. He had co-sponsored the draft resolution with great enthusiasm, and he had proposed his amendments only because changes had occurred in the situation and it would be improper for the Sub-Commission to ignore such serious violations of human rights. He would withdraw his amendment to the operative part. He regretted, however, that he could not withdraw his amendments to the preambles, since they modestly stated a factual situation which had been in the news everywhere. He could not believe that members of the Sub-Commission could not find it in their souls to condemn the practices referred to. If his amendments were rejected with only his own vote in favour, he wanted every non-governmental organization present and all State observers to know that on 30 August 1990 the Sub-Commission had not been able to condemn the violations of international law specified in his two amendments. He therefore insisted that they should be voted on.

102. Mrs. KSENTINI said that she had been about to accept Mr. Eide's proposal, but after listening to Mr. Treat she had changed her mind. Mr. Treat was horrified that diplomats were being deprived of water and electricity, but if the Sub-Commission were to express its concern regarding that point, how could it fail to express its concern regarding the possibility that in future an entire civilian population might be deprived of food? Many non-governmental organizations and Arabs were concerned over what would be the situation of the Arab population if it were to be deprived of food. Thus, in order to balance Mr. Treat's amendments, she would maintain her own amendment.

103. Mr. EIDE said that his amendment had been intended as an alternative to the amendment proposed by Mrs. Ksentini. Consequently, if she maintained her amendment, he would have to maintain his.

104. In response to the point made by Mr. Alfonso Martínez, he said that the Sub-Commission was no more bound by the Security Council than it was by the Commission on Human Rights. However, he personally took the view that it was necessary to have the embargo and to have an exception to it. The Security Council had formulated an approach with which he agreed.

105. Mrs. PALLEY proposed that the following operative paragraph be inserted between operative paragraphs 3 and 4:

> "Condemns threats made by President Saddam Hussein to use weapons of mass destruction, including chemical and biological weapons, in certain circumstances,".

106. Mr. SUESCÚN MONROY suggested that the meeting might be adjourned.

107. Mr. SAVOIA, speaking on a point of order, said that the multiplicity of oral amendments and sub-amendments was making discussion difficult. He therefore moved, in accordance with rule 65 (2) of the rules of procedure, that no action be taken on the amendments submitted.

108. Mr. HELLER and Mr. JOINET supported that motion.

109. The CHAIRMAN said that the vote would be taken by secret ballot.

110. At the invitation of the Chairman, Mr. Eide and Mrs. Ksentini acted as tellers.

111. A vote was taken by secret ballot.

112. The motion by Mr. Savoia that no action be taken on the proposed amendments to the draft resolution was adopted by 17 votes to 6, with 1 abstention.

113. Mrs. KSENTINI pointed out that the Chairman had not invited speakers opposed to the motion to take the floor.

The summary record of the second part of the meeting appears as document E/CN.4/Sub.2/1990/SR.34/Add.1.

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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-second session

SUMMARY RECORD OF THE SECOND PART* OF THE 34th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 30 August 1990, at 3 p.m.

Chairman: Mr. TÜRK

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Consideration of draft resolutions and decisions (continued)

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* The summary record of the first part of the meeting appears as document E/CN.4/Sub.2/1990/SR.34.

This record is subject to correction.

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GE.90-13662/2482B

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particular reference to colonial and other dependent countries and territories: report of the Sub-Commission under Commission on Human Rights resolution 8 (XXIII) (agenda item 6) (continued) (E/CN.4/Sub.2/1990/L.35, 39, 41; E/CN.4/1990/13, 22)

Draft resolution E/CN.4/Sub.2/1990/L.35

1. Mr. AL-DOURI (Observer for Iraq) said that he had found no evidence in documents E/CN.4/1990/22 and E/CN.4/1990/13, cited in the second preambular paragraph, to confirm the allegations of mass extrajudicial executions, enforced or involuntary disappearances and arbitrary detention in Iraq; such allegations were unfounded. The allegations in the third preambular paragraph concerning the situation of the Kurds in the north of Iraq and the Shi'a population in the south had no foundation in fact. The population in the south had been removed for other reasons and there were no camps in the north of Iraq. The allegations made in the fourth preambular paragraph were not worthy of credit, since, to his knowledge, they had only been made by one organization.

2. He drew attention to the extraordinary circumstances prevailing in Iraq as a result of the blockade to which the country had been subjected and which had more to do with realpolitik than with human rights. In ignoring what was actually going on, the Sub-Commission was burying its head in the sand and his Government would consider that if it adopted the resolution the Sub-Commission would be going beyond the normal scope of its activities.

3. The CHAIRMAN said that, at the request of Mr. Alfonso Martinez, a separate vote would be taken on the third preambular paragraph and on operative paragraph 4.

4. The third preambular paragraph was adopted by 16 votes to 4, with 4 abstentions.

5. Operative paragraph 4 was adopted by 18 votes to 6.

6. The CHAIRMAN invited the Sub-Commission to vote on the draft resolution as a whole.

7. A vote was taken by secret ballot.

8. Draft resolution E/CN.4/Sub.2/1990/L.35 was adopted by 19 votes to 4, with 1 abstention.

Draft resolution E/CN.4/Sub.2/1990/L.39

9. Mr. DESPOUY, introducing the draft resolution, said that for over 10 years the human rights situation in El Salvador had been a source of constant concern, both to the Commission on Human Rights and the Sub-Commission. The draft resolution reflected the encouraging emergence of a dialogue, under

United Nations auspices, between the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional, in which respect for human rights was an essential factor. The draft resolution sought to make a constructive contribution to the peace process in El Salvador and underscored the link between strict observance of human rights and progress towards lasting peace.

10. He said that the sponsors of the draft resolution wished to delete the expression "at the earliest possible date" from paragraph 7 in order to make it clear that a cease-fire was a prerequisite for the verification mission on human rights to be carried out by the United Nations.

11. Mr. JOINET said that the fact that he was not a sponsor of the draft resolution on El Salvador in no way indicated that he disagreed with it but was attributable to external circumstances.

12. Mr. van BOVEN said that he wished to become a sponsor of the draft resolution.

13. Mr. ALFONSO MARTINEZ, supported by Mr. GUISSE, congratulated the sponsors of the draft resolution on producing a text that combined recognition of the complex issues of the situation in El Salvador with the Sub-Commission's fundamental concern for human rights. He felt that the text was sufficiently balanced to receive support from all members of the Sub-Commission and recommended its adoption without a vote.

14. Mr. EIDE said that he wished to become a sponsor of the draft resolution.

15. Mr. CAREY said that he wished to join the consensus on the text, which recognized the complexity of the human rights situation in El Salvador and acknowledged the co-operation between the Government and the Commission's Special Representative. He noted that although human rights abuses continued to be committed in El Salvador, the Government had recently taken a number of steps to improve the situation, including the establishment of a Salvadorian armed forces human rights office. He expressed satisfaction at the efforts made on behalf of the people of El Salvador and urged both parties to place human rights at the forefront of their dialogue.

16. Mr. MENDOZA (Observer for El Salvador) said that the current draft resolution differed from previous resolutions on El Salvador in a number of ways. First, it welcomed the renewal of the dialogue between the Government of El Salvador and FMLN, thanks to the good offices of the Secretary-General of the United Nations, which had led to the agreement of 4 April 1990; it also emphasized the importance of the partial agreement on human rights of 26 July 1990 and urged both parties to avoid any act or practice prejudicial to the life, security and freedom of persons. The full support and co-operation given to the Secretary-General of the United Nations with a view to the realization of the verification mission on human rights was also extremely encouraging. He confirmed that the Government of El Salvador wished the mission to take place as quickly as possible. He deeply regretted the aggressive stance adopted by FMLN which had prevented agreement at the most recent meeting of the dialogue.

17. Mr. ALFONSO MARTINEZ, speaking on a point of order, requested the Chairman to ask the observer for El Salvador to respect the atmosphere of comprehension and goodwill that had marked the discussions on the draft resolution and to refrain from denigrating the other party to the conflict.

18. The CHAIRMAN asked the observer for El Salvador to refrain from using language that might create unnecessary difficulties in the process of adoption of the draft resolution.

19. Mr. MENDOZA (Observer for El Salvador) underscored the importance of the recommendation in operative paragraph 8 that the Special Representative of the Commission on Human Rights should place special emphasis on verifying whether the commitments and measures set out in the agreement on human rights of 26 July 1990 had been implemented, and expressed the conviction that strict observance of human rights was a sine qua non to guarantee a just and lasting peace in El Salvador.

20. Draft resolution E/CN.4/Sub.2/1990/L.39 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1990/L.41

21. Mr. JOINET, introducing the draft resolution, said that he appreciated the decision by the observer for Indonesia to present his arguments in a written note. However, he said that the claim that representatives of non-governmental organizations had been able to visit East Timor without restriction was not borne out by the information he had been given by certain NGOs.

22. Criticism concerning political bias was totally unfounded as the text deliberately avoided any reference to the administering Power or to self-determination. The sponsors wished to insert the words "in order to ensure full respect for human rights" at the end of the second preambular paragraph, and to replace in operative paragraph 1 the words "a comprehensive solution to the problem of East Timor" by the words "a solution to ensure full respect for human rights in East Timor;". He hoped that those amendments would help to satisfy those who wished the draft resolution to confine itself to the sphere of human rights and that they would be able to support the text as amended.

23. Mrs. DAES emphasized the humanitarian spirit of the draft resolution and said that after studying the problem of East Timor for 15 years both in the Sub-Commission and the General Assembly, she had become convinced that human rights violations had taken place there ever since its illegal invasion. Although the violations were perhaps neither gross nor systematic, there was no doubt that they existed, and she underscored the importance of operative paragraph 3 of the draft resolution.

24. Mr. TREAT said that he also had followed the situation in East Timor for a number of years and he endorsed the views of the two previous speakers. Substantial progress appeared to have been made in that country and the Indonesian Government deserved credit for several recent developments, the most noteworthy of which was the opening of a large number of new educational establishments. Those developments, together with the recent visits to East Timor by important personalities, should be placed on record to balance earlier statements that gave a rather more negative picture of the situation.

25. Mr. EIDE said that he fully supported the draft resolution and would like to become a sponsor. In his opinion a referendum would be the ideal way of settling the question of East Timor's future and he had heard no convincing reason why a referendum could not be held. If such a referendum showed that East Timor wished to become part of Indonesia, he would then withdraw his support from the resolution.

26. Mr. ILKAHANAF differed from Mr. Joinet and Mrs. Daes for reasons of both principle and procedure. The whole issue of East Timor was a political one involving the former colonial Powers, Portugal and Indonesia, as well as the question of self-determination. The issues raised by the draft resolution merely covered up the fundamental questions. In his view the Sub-Commission was not the proper place to settle the problem of East Timor.

27. In resolution 1990/64 the Commission on Human Rights had invited the Sub-Commission to avoid any proliferation of draft resolutions or decisions on issues already being dealt with by the Commission and to seek the widest possible measure of agreement on draft resolutions. The draft resolution before the Sub-Commission was typical of the type of resolution that the Commission had invited the Sub-Commission to avoid. At its forty-sixth session the Commission on Human Rights had taken no action on Sub-Commission resolution 1989/7 and there had been no new developments to justify a further resolution on the same issue. He wondered whether it was proper to forward to the Commission a resolution similar to one it had already ignored.

28. The Secretary-General was trying to find a solution to the situation in East Timor; the situation was also being closely followed by the General Assembly. A solution to the fundamental political problem in East Timor should be sought in those spheres rather than in the Sub-Commission.

29. Mr. JOINET agreed with Mr. Ilkahanaf as to the inappropriateness of the Sub-Commission as a forum for deciding the future of the people of East Timor, and drew his attention to the amendments made to the draft resolution in order to emphasize its strictly humanitarian objective.

30. Mrs. MBONU said that in view of the improvement in the human rights situation in East Timor, described by Mr. Treat, she felt that it was inappropriate for the Sub-Commission to concern itself with a draft resolution on an issue that was essentially political.

31. Mrs. PALLEY said that she fully endorsed the amendments made to the draft resolution in order to emphasize its humanitarian character. In reply to the view expressed by Mrs. Mbonu, she said that self-determination was the most fundamental of all rights, and not merely a political, but also a fundamental human right that lay, for example, at the crux of the problem in South Africa.

32. Mrs. KSENTINI, supported by Mr. van BOVEN, said that the draft resolution could not but help towards a peaceful solution to the problem in East Timor, whatever the political implications of the problem might be. She could not share Mr. Ilkahanaf's view that the draft resolution contributed to a proliferation of resolutions. It concerned one of a series of cases that did not receive attention from the Commission and with which the Sub-Commission should concern itself.

33. Mrs. DAES said, in reply to the point raised by Mr. Treat, that the sponsors of the draft resolution were not unaware that some progress had been made in East Timor. However, she was convinced that if he had heard, as she had, the concrete descriptions of human rights violations made before the Working Group on Indigenous Populations, he would not have been so confident about the improvements made.

34. Mr. LOEIS (Observer for Indonesia) pointed out that the draft resolution was formulated along the same lines as the previous year's. All its paragraphs had strong political elements clearly reflected in the references made to the ongoing dialogue and to a comprehensive political solution to the so-called issue of East Timor; those were matters outside the competence of the Sub-Commission. He also noted that Commission on Human Rights resolutions 1988/43 and 1989/36 had urged the Sub-Commission to avoid as much as possible political issues within the jurisdiction of other United Nations bodies.

35. Access to East Timor was a non-issue, as Indonesia was one of the few countries in the world with a policy of open entry. Members of human rights organizations had themselves recognized that they had travelled to remote areas of the province without restriction. The allegations of human rights violations were merely an exaggeration of certain incidents, based on one-sided and unfounded allegations. Finally, as the Commission had not taken any action on the so-called issue of East Timor for the last five years further consideration of it would be a futile exercise, and he respectfully requested the members of the Sub-Commission to reject the draft resolution.

36. A vote was taken by secret ballot.

37. Draft resolution E/CN.4/Sub.2/1990/L.41, as amended, was adopted by 14 votes to 9, with 1 abstention.

Review of further developments in fields with which the Sub-Commission has been concerned (agenda item 4) (continued) (E/CN.4/Sub.2/1990/L.62)

Draft decision E/CN.4/Sub.2/1990/L.62

38. Mrs. PALLEY said that she wished to become a sponsor of the draft decision.

39. Mr. TREAT proposed inserting the word "updated" before the word "report" in the antipenultimate line of the draft decision.

40. Mrs. DAES said that she preferred the expression "progress report" to "updated report".

41. Mr. ALFONSO MARTINEZ proposed the following amendment to line 6 of the draft decision in order to harmonize it with the previous practice of the Sub-Commission: "... to accomplish his work. It further requests the Special Rapporteur to take into account in his future work the opinions expressed during the debate on his preliminary report at its forty-second session, and decides ...".

42. Mrs. DAES thanked Mr. Alfonso Martínez for his constructive proposal. She said however that the text proposed by him should begin a new paragraph and the word "opinions" should be replaced by "views".

43. Draft decision E/CN.4/Sub.2/1990/L.62, as amended, was adopted without a vote.

The new international economic order and the promotion of human rights (agenda item 7) (continued) (E/CN.4/Sub.2/1990/L.31)

Draft decision E/CN.4/Sub.2/1990/L.31

44. Mr. DESPOUY, introducing the draft decision, said that the study of human rights and extreme poverty clearly came within the scope of the Sub-Commission as the interdependence between economic, social and cultural and civil and political rights had long been established. He was confident that the results of Mr. Suescun Monroy's work would provide a basis for his appointment as Special Rapporteur on the subject, in line with the wishes of the Commission on Human Rights, and hoped that the draft decision would be adopted by consensus.

45. Mr. ALFONSO MARTINEZ agreed with Mr. Despouy on the need for the Sub-Commission to respond rapidly to the request made by the Commission on Human Rights in operative paragraph 5 of its resolution 1990/15. However, he proposed to delete the second half of the first sentence after the words "in its resolution 1990/15".

46. Mr. SUESCUN MONROY said that, as the expert appointed to prepare the method and plan of work for the study on human rights and extreme poverty, he felt that it was preferable that the decision should allow him a degree of intellectual freedom.

47. Mr. ALFONSO MARTINEZ said that the purpose of his proposed amendment had in no way been to restrict the intellectual freedom of the expert charged with preparing the plan of work for the study on human rights, but merely to align the Sub-Commission's resolution with Commission resolution 1990/15. If his amendment was acceptable, he would like to become a sponsor of the draft resolution.

48. Mr. DESPOUY said that he had no objection to Mr. Alfonso Martínez's amendment.

49. The CHAIRMAN said that Mr. Sachar and Mrs. Mbonu should be added to the list of sponsors.

50. Draft decision E/CN.4/Sub.2/1990/L.31, as amended, was adopted without a vote.

51. Mr. EIDE proposed that in view of the time constraints no further introductions should be made to draft resolutions; members of the Sub-Commission should confine themselves to stating their opposition or to proposing specific changes to them.

52. The proposal by Mr. Eide was adopted without objection.

The realization of economic, social and cultural rights (agenda item 8) (continued) (E/CN.4/Sub.2/1990/L.37, 52, 60)

Draft resolution E/CN.4/Sub.2/1990/L.37

53. Mr. ALFONSO MARTINEZ said that he wished to become a sponsor of the draft resolution and drew attention to the important innovation contained in operative paragraph 3.

54. Draft resolution E/CN.4/Sub.2/1990/L.37 was adopted without a vote.

Draft resolutions E/CN.4/Sub.2/1990/L.52 and L.60

55. Mrs. DAES informed the Sub-Commission that Mr. van Boven had accepted the amendments she had proposed in document E/CN.4/Sub.2/1990/L.60 with minor amendments of form.

56. Mrs. KSENTINI and Mrs. PALLEY asked to become sponsors of the draft resolution.

57. Mr. GUISSE pointed out that the last preambular paragraph of draft resolution E/CN.4/Sub.2/1990/L.52 was tautological and proposed deleting the word "involuntary" from line 1 of the paragraph.

58. Mrs. PALLEY proposed that the paragraph should be amended as follows: "Concerned that the movement of people is often achieved either without the free and informed consent of those people being moved or without the consent of the people into whose territory they are being moved,".

59. Draft resolution E/CN.4/Sub.2/1990/L.52, as amended in document E/CN.4/Sub.2/1990/L.60 and orally, was adopted without a vote.

The administration of justice and the human rights of detainees (agenda item 10) (continued)

(a) Question of human rights of persons subjected to any form of detention and imprisonment

(b) Question of human rights and states of emergency

(c) The individualization of prosecution and penalties, and repercussions of violations of human rights on families

(d) The right to a fair trial

(E/CN.4/Sub.2/1990/L.20, 27, 30, 36, 38, 42 and 46)

Draft resolution E/CN.4/Sub.2/1990/L.20

60. The CHAIRMAN said that Mr. Alfonso Martínez and Mr. Sachar had become sponsors of the draft resolution.

61. Mr. HATANO said that as operative paragraph 2 of the draft resolution made reference to the draft declaration on the protection of all persons from

enforced or involuntary disappearances, contained in the report of the Working Group which was not available, consideration of the draft resolution should be postponed until the following morning.

62. It was so decided.

Draft resolution E/CN.4/Sub.2/1990/L.27

63. Mr. JOINET requested that the following year the two rapporteurs should consider their report on the right to a fair trial together with the members of the Working Group on Detention before submitting it to the Sub-Commission.

64. Draft resolution E/CN.4/Sub.2/1990/L.27 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1990/L.30

65. The CHAIRMAN said that Mr. Sachar had become a sponsor of the draft resolution.

66. Draft resolution E/CN.4/Sub.2/1990/L.30 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1990/L.36

67. The CHAIRMAN said that Mr. Joinet, Mr. van Boven and Mr. Despouy had become sponsors of the draft resolution.

68. Draft resolution E/CN.4/Sub.2/1990/L.36 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1990/L.38

69. The CHAIRMAN said that Mr. Sachar had become a sponsor of the draft resolution.

70. Draft resolution E/CN.4/Sub.2/1990/L.38 was adopted without a vote.

Draft decision E/CN.4/Sub.2/1990/L.42

71. The CHAIRMAN said that Mrs. Bautista, Mrs. Daes, Mr. Ilkahanaf and Mr. Joinet had become sponsors of the draft decision.

72. Draft decision E/CN.4/Sub.2/1990/L.42 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1990/L.46

73. Draft resolution E/CN.4/Sub.2/1990/L.46 was adopted without a vote.

Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (agenda item 11) (continued) (E/CN.4/Sub.2/1990/L.25)

Draft resolution E/CN.4/Sub.2/1990/L.25

74. Mr. van BOVEN proposed inserting a new paragraph between paragraphs 5 and 6 of the draft resolution reading as follows:

"Requests the Secretary-General to transmit this resolution to Governments, intergovernmental and non-governmental organizations, including professional associations of judges and lawyers, requesting specific information on measures taken to strengthen the independence of the judiciary and lawyers or on practices which have undermined this independence;".

75. Draft resolution E/CN.4/Sub.2/1990/L.25, as amended, was adopted without a vote.

The meeting rose at 6.05 p.m.

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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 35th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 31 August 1990, at 10 a.m.

Chairman: Mr. TURK

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Statement by the Chairman

Consideration of draft resolutions and decisions (continued)

Organization of work (continued)

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* The summary record of the second part (closed) of the meeting appears as document E/CN.4/Sub.2/1990/SR.35/Add.1.

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GE.90-13600/4914a

The meeting was called to order at 10.25 a.m.

STATEMENT BY THE CHAIRMAN

1. The CHAIRMAN informed the Sub-Commission that, in connection with the dispute between the Mohawks and the authorities of Quebec, he had just had a conversation with the representative of Canada, who had let him know that the Canadian forces and representatives of the Mohawks had confirmed that the peaceful dismantling of the barricades was continuing. The problem of supplying foodstuffs and medicines had also been taken up, and the representative of Canada had stated that the authorities of his country were taking care to ensure that supplies were delivered. He had also stated that the Mohawks had broken off negotiations begun on other issues. Nevertheless, the Canadian Government was still willing to resume consideration of those issues of concern to the Mohawk community and would continue to keep the Sub-Commission and the Secretary-General informed of developments.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

Draft resolution E/CN.4/Sub.2/1990/L.22 (agenda item 14)

2. The CHAIRMAN announced that Mr. Alfonso Martínez, Mrs. Daes, Mr. Ilkahanaf, Mr. Joinet, Mrs. Pallev, Mr. Saboia, Mr. Sacher and Mr. Suescún also wished to sponsor the draft resolution.

3. Mr. SABOIA pointed out that, in operative paragraph 2 of the English text, the word "expressing" should be replaced by the word "expresses".

4. Draft resolution E/CN.4/Sub.2/1990/L.22, as amended orally, was adopted without a vote.

Consideration of draft resolutions relating to agenda item 15 (E/CN.4/Sub.2/1990/L.44, L.47, L.49, L.50, L.51 and L.53)

Draft resolution E/CN.4/Sub.2/1990/L.44

5. The CHAIRMAN announced that Mr. Eide, Mrs. Ksentini, Mrs. Pallev and Mr. Suescún wished their names to be added to the list of sponsors.

6. Mr. ALFONSO MARTINEZ, speaking on behalf of the sponsors, said that the draft resolution should be corrected as follows. First of all, in operative paragraph 2, the text after the words "and institutions" should be amended to read: "to start negotiations with indigenous owners with a view to returning, at the earliest possible time, these items"; later, in the first line of operative paragraph 3, the words "enact legislation requiring" should be replaced by the words "take the necessary and effective steps so that"; and in the third line, after the word "return", the words "at the earliest possible time" should be added.

7. Mr. SUESCUN asked whether it was really necessary, in operative paragraph 2, to refer to "indigenous owners".

8. Mr. ALFONSO MARTINEZ explained that the point at issue was the return of items to the persons to whom they belonged.

9. Mr. ILKAHANAF noted that a number of the items referred to in the draft resolution were extremely rare and valuable; he wondered whether, after their return, the items concerned would be placed in museums, if there were any, or what would become of them.

10. Mrs. KSENTINI proposed that, in operative paragraph 2, the amendment proposed by Mr. Alfonso Martínez be replaced by the following words: "to start negotiations with the indigenous owners with a view to returning to them the items belonging to them".

11. The CHAIRMAN said that, if he heard no objection, he would take it that the Sub-Commission accepted Mr. Alfonso Martínez's amendments, as further amended by Mrs. Ksentini.

12. Draft resolution E/CN.4/Sub.2/1990/L.44, as amended orally, was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1990/L.47

13. The CHAIRMAN announced that Mrs. Bautista, Mr. Eide and Mrs. Ksentini had also become sponsors.

14. Draft resolution E/CN.4/Sub.2/1990/L.47 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1990/L.49

15. Mrs. PALLEY proposed that the words "and to ascertain what assistance they may require" be added at the end of operative paragraph 4.

16. The CHAIRMAN informed the Sub-Commission that discussions on the draft resolution were still under way. He therefore suggested that any decision on it be postponed until later.

17. It was so decided.

Draft resolution E/CN.4/Sub.2/1990/L.50

18. The CHAIRMAN announced that Mrs. Bautista had also become a sponsor.

19. Draft resolution E/CN.4/Sub.2/1990/L.50 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1990/L.51

20. The CHAIRMAN announced that Mrs. Bautista and Mr. Treat had also become sponsors.

21. Draft resolution E/CN.4/Sub.2/1990/L.51 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1990/L.53

22. The CHAIRMAN announced that Mrs. Bautista, Mrs. Ksentini and Mr. Treat had also become sponsors.

23. Draft resolution E/CN.4/Sub.2/1990/L.53 was adopted without a vote.

Consideration of draft resolutions relating to agenda item 16

Draft resolution E/CN.4/Sub.2/1990/L.28

24. The CHAIRMAN announced that Mr. Guissé, Mr. Heller, Mr. Ilkahanaf, Mr. Khalil, Mrs. Mbonu and Mr. Saboia had also become sponsors. Mrs. Daes had also pointed out that, although her name had been omitted from the list of sponsors, she was one of them.

25. Draft resolution E/CN.4/Sub.2/1990/L.28 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1990/L.29

26. Mrs. KSENTINI said that, in the third line of paragraph 6 of the programme of action for the elimination of the exploitation of child labour, the words "children of refugees" should be replaced by the words "refugee children".

27. Mr. GUISSE proposed that the words "or minimum ages" be deleted from paragraph 2 (a) of article 32 of the Convention on the Rights of the Child reproduced in paragraph 16 of the draft resolution.

28. Mr. ALFONSO MARTINEZ expressed the view that the text of that sub-paragraph should not be amended, since in some countries there were different minimum ages for admission to employment according to the kind of work involved.

29. Mrs. KSENTINI asked Mr. Guissé not to insist on his proposal, since the text concerned related to the terms of the Convention, which were also used by the International Labour Organisation.

30. Mrs. DAES agreed with Mr. Alfonso Martínez and with Mrs. Ksentini that the text of the sub-paragraph should not be amended.

31. Mr. GUISSE withdrew his proposal.

32. The CHAIRMAN announced that Mr. Alfonso Martínez, Mr. Flinterman, Mr. Guissé, Mr. Heller, Mr. Ilkahanaf, Mr. Khalil, Mrs. Mbonu, Mrs. Palley, Mr. Saboia, and Mr. Treat had also become sponsors.

33. Draft resolution E/CN.4/Sub.2/1990/L.29, as amended orally by Mrs. Ksentini, was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1990/L.61 (agenda item 17)

34. Mr. TREAT, Mrs. BAUTISTA and Mr. MAXIM said that they wished to become sponsors.

35. The CHAIRMAN, replying to a request for clarification made by Mr. ALFONSO MARTINEZ as to the type of report that Mr. Mazilu would present, said that, in the light of the further information supplied by Mr. Eide and Mrs. Daes, it would be an interim report.

36. Mr. ALFONSO MARTINEZ said that in that case it would be advisable to make it clear, in operative paragraph 2, that Mr. Mazilu was invited to present "an interim report", and not "his report".

37. Draft resolution E/CN.4/Sub.2/1990/L.61, as amended orally, was adopted without a vote.

Draft decision E/CN.4/Sub.2/1990/L.43 (agenda item 19)

38. Mr. ALFONSO MARTINEZ said that the Sub-Commission could take a decision on the draft decision even in the absence of Mr. Sadi, in view of the talks which had been held with him on the previous day.

39. Mrs. KSENTINI noted a contradiction in the draft decision. It was not certain that the revised version of the draft declaration referred to would be ready the following year, as was recognized, moreover, by the sponsors of the draft decision in providing that the revised version should be submitted "if possible" to the working group. By inviting the Special Rapporteur, Mr. Mubanga Chipoya, to come to Geneva for meetings of the working group, the Sub-Commission might cause him to travel for nothing. She proposed that the problem should be settled by adding, in the penultimate line of the draft decision, the words "if necessary" between the word "invite" and the words "the Special Rapporteur".

40. Mr. TREAT, Mrs. KSENTINI and Mrs. DAES said that they wished their names to be added to the list of sponsors.

41. Draft decision E/CN.4/Sub.2/1990/L.43, as amended orally, was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1990/L.20 (agenda item 10)

42. Mr. FLINTERMAN said that he wished to become a sponsor and proposed that the following new paragraph be added after the third preambular paragraph:

> "Noting with appreciation the participation and valuable observations of the Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights and of various non-governmental organizations in the drafting of an international instrument to combat enforced or involuntary disappearances."

43. Mr. ALFONSO MARTINEZ, supported by Mr. HELLER, said that he was not sure that the working group as such had really "participated" in the drafting of the instrument. He therefore proposed that any reference to its "participation" in Mr. Flinterman's proposal be deleted.

44. Mr. YOKOTO considered that the word "contributions" would be more appropriate than the word "observations", since it had a more active connotation.

45. Mrs. BAUTISTA and Mrs. DAES announced that they wished their names to be added to the list of sponsors.

46. Mrs. KSENTINI, joined by Mrs. PALLEY, said that she could not take any decision on the draft resolution. It contained a reference to the report of the Working Group on Detention (E/CN.4/Sub.2/1990/32), but that document had not been distributed and it had not been possible to examine it.

47. Mr. EIDE said that he found himself in the same situation and proposed that the document, which was now available, be distributed so that members of the Sub-Commission could acquaint themselves with its contents.

48. After a discussion in which Mr. KEILAN (Centre for Human Rights), Mr. HELLER, Mrs. KSENTINI, Mr. ALFONSO MARTINEZ and the CHAIRMAN took part, the latter suggested that consideration of document E/CN.4/Sub.2/1990/32 and of draft resolution E/CN.4/Sub.2/1990/L.20 should be postponed. If there was no objection, he would take it that the Sub-Commission approved that suggestion.

49. It was so decided.

Draft resolution E/CN.4/Sub.2/1990/L.49 (agenda item 15)

50. The CHAIRMAN suggested that consideration of draft resolution E/CN.4/Sub.2/1990/L.49 be postponed until the informal consultations on it had been successfully concluded. If there was no objection, he would take it that the Sub-Commission approved that suggestion.

51. It was so decided.

ORGANIZATION OF WORK (continued)

52. Mrs. KSENTINI asked whether the report of the open-ended Working Group established pursuant to Sub-Commission decision 1989/104 (E/CN.4/Sub.2/1990/14) was available.

53. Mr. MAXIM recalled that the Sub-Commission had requested the Secretariat to draft a document explaining the status of experts and to deliver it to them before the end of the session. He would also like to have some further information on the progress made in preparing the documentation.

54. The CHAIRMAN said that the Secretariat had duly taken note of Mr. Maxim's questions and would reply to them in the course of the day.

55. Mr. ALFONSO MARTINEZ asked whether the report of the sessional working group on the right of everyone to leave any country, including his own, and to return to his country (E/CN.4/Sub.2/1990/48) would be available by the end of the session.

56. Mr. KEILAN (Centre for Human Rights) informed the members of the Sub-Commission that the only version of the report of the Working Group on Detention (E/CN.4/Sub.2/1990/32) in existence - namely, the English version - was not yet finalized. In reply to Mr. Guissé and to Mr. Alfonso Martínez, who had inquired about the French and Spanish versions of that report, he explained that the draft declaration on the protection of all persons from enforced or involuntary disappearances reproduced in annex I to that document

had been issued separately in English, French and Spanish as document E/CN.4/Sub.2/1990/WG.1/WP.1/Add.1. The report of the open-ended Working Group established pursuant to Sub-Commission decision 1989/104 (E/CN.4/Sub.2/1990/14) was also now available, but in English only.

57. The CHAIRMAN invited the different regional groups to hold consultations on the composition of the working groups that were due to meet before the next session of the Sub-Commission - namely, the Working Group on Communications, the Working Group on Contemporary Forms of Slavery and the Working Group on Indigenous Populations.

The meeting rose at 11.55 a.m.

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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-second session

SUMMARY RECORD OF THE 36TH MEETING

Held at the Palais des Nations, Geneva,
on Friday, 31 August 1990, at 3 p.m.

Chairman: Mr. TÜRK

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Pre-sessional working groups

Closure of the session

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GE.90-13606/2422B

The meeting was called to order at 3.35 p.m.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

The administration of justice and the human rights of detainees (agenda item 10) (continued) (E/CN.4/Sub.2/1990/L.20)

Draft resolution E/CN.4/Sub.2/1990/L.20

1. Mr. HATANO said that the Working Group on Detention had finalized a draft declaration on the protection of all persons from enforced and involuntary disappearances which was the outcome of extensive formal and informal consultations and discussions over a number of years among members of the Working Group, government observers and representatives of non-governmental organizations. The members of the Working Group hoped that the draft declaration could be adopted by the plenary and submitted to the Commission on Human Rights.

2. Mr. JOINET reviewed the events leading to the finalized draft declaration. He stressed that the text represented a consensus worked out among the non-governmental organizations, especially organizations of families of persons who had disappeared and the members of the Working Group.

3. Drawing attention to some of the main ideas in the text, he noted that the right to recognition as a person before the law had been strongly emphasized because in some countries the so-called legal theory of absence denied not only life but also legal existence. Furthermore, it was considered important to make a clear distinction between the practice of disappearance, which was a crime in any circumstance, and cases where disappearance became virtually an organized government policy, in other words, the systematized practice of disappearance organized as a policy of repression. States were encouraged to include appropriate measures in their legislation. The concept of incitement, borrowed from the theory of State responsibility, was adduced. The draft declaration then recalled that at no time should exceptional circumstances justify disappearance. It stressed that no State should expel or extradite a person to any State where he was in danger of disappearance. The importance of habeas corpus was underlined as a means of preventing disappearance and measures were suggested concerning the administration of places of detention, for instance, the appointment of competent authorities and the establishment of registers. Furthermore, the draft declaration emphasized the importance of protecting persons who defended disappeared persons or their families, since that was a major problem. States were urged not to grant asylum or refugee status to persons who were responsible for such disappearances.

4. On the issue of whether those who participated indirectly in such acts should be encouraged to cross over and to help those who were fighting against them, two measures were proposed: a State could grant asylum to anyone who co-operated by disclosing networks of instigators or mitigating circumstances might be established for such persons. Finally, the draft declaration recalled that persons responsible for disappearances should not benefit from a statute of limitations or from any amnesty, that victims should have the right to compensation and that the appropriation of children of persons who had disappeared should be prevented.

5. Those were the main points that had been discussed in the Working Group in the course of five years of work. He hoped that the consensus reached in the Group would be acceptable to the Sub-Commission.

6. The CHAIRMAN said that Mrs. Ksentini, Mrs. Palley, Mr. Sachar, Mr. Ilkahanaf and Mr. Heller had become sponsors of the draft resolution.

7. Draft resolution E/CN.4/Sub.2/1990/L.20 was adopted without a vote.

Discrimination against indigenous peoples (agenda item 15) (continued) (E/CN.4/Sub.2/1990/L.49)

Draft resolution E/CN.4/Sub.2/1990/L.49

8. Mrs. PALLEY said that on a point of clarification, she wished to state that Mrs. Daes had taken no part in the negotiations leading to the resolution nor had she helped to draft it.

9. Mr. COOK (Observer for the United States of America) said that his Government was making a great effort through a multitude of programmes to assist its indigenous populations. With regard to the particular situation before the Sub-Commission, it should be stressed that no forced relocation had occurred at any time. Second, the Navajo relocation programme would cost the United States Government in excess of $250 million. A total of 170 families had already received their relocation homes, which had cost an average of $70,000 each. Only some 30 Navajo families had stated that they did not wish to relocate.

10. The United States legislative and executive branches of Government along with the Federal Court system were deeply involved in the Navajo relocation programme and were working to bring that complex situation to a conclusion acceptable to all parties, while also protecting the rights of the individuals concerned, of both the Navajo and Hopi tribes.

11. His delegation would be pleased to provide any additional information on the situation to individual members of the Sub-Commission.

12. Draft resolution E/CN.4/Sub.2/1990/L.49 was adopted without a vote.

13. Mrs. DAES congratulated the Chairman of the Sub-Commission on the constructive and exemplary manner in which he had contributed to consideration of the Mohawk Nation's case. She also thanked the Government of Canada and in particular, its Permanent Representative, for the responsible and exemplary manner in which they had co-operated with the Chairman and herself in her capacity as Chairman of the Working Group in keeping the Sub-Commission informed of the complex situation and developments in Oka-Kanesatake. She also thanked Mr. Deer, the representative of the Mohawk Nation, for the information he had provided and his constructive position in the Working Group on Indigenous Populations and the Sub-Commission during the discussion of the Mohawk situation and other relevant items. She expressed her appreciation of the significant role which the International Federation of Human Rights had played in solving a number of relevant problems within its mandate.

14. The co-operation of the Government of Canada in particular, had enabled the members of the Working Group and the Sub-Commission to arrive at a balanced assessment of a difficult situation. Rarely had the Sub-Commission been so well informed or in such direct contact with all the parties concerned and all the possibilities involved in any situation. She hoped, furthermore, that the fruitful dialogue begun would continue until the Sub-Commission met next year and thus enable it to contribute, in some way, to the continuing efforts of all parties to resolve that tragic situation peacefully. She hoped also that continued progress would be made on the matter after the closure of the present session of the Sub-Commission and that respect for human rights and fundamental freedoms, as well as the principle of the rule of law would prevail.

15. The CHAIRMAN read out a letter, dated 31 August 1990, from the Permanent Representative of Canada concerning his country's co-operation with the Sub-Commission.

16. In his letter, the Permanent Representative recalled that since the beginning of the current session of the Sub-Commission, he had taken the initiative of establishing and maintaining close contacts with the Chairman of the Sub-Commission, with Mrs. Daes, Chairman of the Working Group on Indigenous Populations, with Mr. Martenson, Under-Secretary-General for Human Rights and with officials of the Centre for Human Rights. He had done so at the request of the Government of Canada in order to keep the Sub-Commission informed of the Government's efforts to ensure a peaceful resolution of the situation at Oka-Kanesatake and Kahnawake, in a manner respecting the human rights of all persons concerned.

17. The Permanent Representative expressed his personal appreciation and that of the Government of Canada to the Chairman and to Mrs. Daes for the responsible fashion in which they had addressed that very delicate matter throughout the session.

18. As indicated in a statement to the Sub-Commission by the Canadian delegation on 29 August 1990, the institutions established in Canada to ensure respect for the human rights of all citizens would continue to perform their functions openly as the situation unfolded.

19. The Permanent Representative expressed his intention of pursuing contacts on the subject with the Under-Secretary-General and his officials in Geneva after the conclusion of the current session of the Sub-Commission. The purpose of those contacts would be to keep the Centre for Human Rights and, through the Centre, the Chairman and Mrs. Daes fully informed of developments relating to events at Oka-Kanesatake and Kahnawake, particularly as they affected the protection of the human rights of everyone concerned.

20. He considered the letter from the Permanent Representative of Canada to be particularly important and gratifying because it enabled the Sub-Commission to continue its contacts with the Government of Canada and showed that the Government was willing to pursue those contacts.

21. He then read out his letter of 31 August 1990 to the Permanent Representative of Canada, in which he welcomed the arrangements proposed and expressed appreciation of the efforts made by the Permanent Representative to

keep the Sub-Commission informed of developments, thereby enabling it to have timely information on Canada's efforts to ensure a peaceful resolution of the situation in a manner respecting the human rights of all concerned. He had expressed the hope that the attitude of the Permanent Representative would contribute to setting a precedent to be followed by others in assisting United Nations human rights organs to achieve an objective understanding of questions brought to their attention.

ORGANIZATION OF WORK (continued)

22. The CHAIRMAN recalled that during the morning meeting the Sub-Commission had requested information about an incident which had involved Mrs. Warzazi and about the legal status and protection of members of the Sub-Commission.

23. Mrs. NOLL-WAGENFELD (Senior Legal Officer, United Nations Office at Geneva) said that the unfortunate incident involving Mrs. Warzazi was currently under investigation by the competent Swiss authorities, and that the incident had caused the Office to reflect on ways in which the police or other authorities, in particular, of the host country could be made aware of the status of the members of the Sub-Commission.

24. In an advisory opinion issued on 15 December 1989, the International Court of Justice had stated that members of the Sub-Commission who were appointed in a personal capacity, not as representatives of States, should, in keeping with United Nations practice, be considered as experts on mission, within the meaning of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946. Members therefore enjoyed the privileges and immunities set out in that Convention.

25. The Office had contacted the Permanent Mission of Switzerland in that respect which had agreed to study, in co-operation with the United Nations Office at Geneva, the possibility of issuing members of the Sub-Commission with an identity card reflecting their status and the privileges and immunities related thereto.

26. Mrs. PALLEY asked whether at the moment discussions were still being held or whether anything specific had been decided and when a document would be issued to those members of the Sub-Commission who might need protection.

27. Mr. ALFONSO MARTINEZ said that he understood that talks were being held between the United Nations Office at Geneva and the Swiss authorities in order to establish a document identifying all members of the Sub-Commission. The point at issue, however, was not so much the provision of an identity card by the Swiss Government but a document issued by the United Nations Secretariat accrediting their status. He had no objection to conversations continuing between the Swiss Federal Government and the Director-General of the United Nations Office at Geneva about the provision of a Swiss identity document but a document issued by the United Nations was needed by members of the Sub-Commission to prevent any kind of incident while they were in Geneva and he would like to know whether the internal regulations of the United Nations contained any provision for the issuance of a document of that kind.

28. Mr. GUISSE said that he supported the view expressed by Mr. Alfonso Martínez. However, any identity card issued by the Swiss Government would be valid only on Swiss territory. The point at issue was not simply immunity and protection on Swiss territory but protection in the other countries as well.

29. Mr. LAGHMARI expressed appreciation of the efforts made by Mr. Martenson, the Under-Secretary-General for Human Rights and the relevant departments of the Secretariat and hoped that positive results would ensue for all members of the Sub-Commission.

30. The CHAIRMAN invited the Senior Legal Officer to respond to the issues raised.

31. Mrs. NOLL-WAGENFELD (Senior Legal Officer, United Nations Office at Geneva) said, in answer to Mrs. Palley's question, that at the present time only discussions were being held. Nothing concrete had emerged so far because the policemen involved in the case were on leave and could only be heard the following week, i.e. after the end of the Sub-Commission's session and therefore after the members had left. The purpose of contacting the Permanent Mission of Switzerland in order to envisage some sort of Swiss identity document for members was mainly a step to avoid repetition of such an incident in the future. The United Nations Office at Geneva could hold those discussions directly with the Swiss authorities.

32. The other proposal, i.e. to establish a United Nations document which would reflect the status and privileges of members, had been brought to the attention of the Office of Legal Affairs at Headquarters. However, the Office of Legal Affairs was at present very busy with other matters and would need some time to look into the question. She had contacted Headquarters immediately and had been told that the issue had to be viewed in the light of the fact that there were other expert organs which might request a similar document, that all other services concerned had to be contacted and a solution found that was acceptable to all. That would take much more time.

33. Mr. ALFONSO MARTINEZ said that he hoped that when the Senior Legal Officer had said much more time was needed she did not mean that it would take more time than that needed for the negotiations with the Swiss Government.

34. Mrs. BAUTISTA asked whether the United Nations Legal Office was aware of the decision of the International Court of Justice concerning the status of experts of the Sub-Commission and their entitlement to the privileges, immunities and entitlements of officers of the United Nations. In the light of that decision, she thought it was not therefore necessary to consider the issue raised by the Sub-Commission as merely a matter of obtaining an identity card from the Swiss Government but of affording members of the Sub-Commission the same documents as those given to any other officer of the United Nations and the privileges and immunities to which they were entitled.

35. Mrs. PALLEY suggested that the Under-Secretary-General for Human Rights should provide members of the Sub-Commission with a letter setting out the opinion of the International Court of Justice with a view to ensuring their safety.

36. Mr. MARTENSON (Under-Secretary-General for Human Rights) said that he was very much seized with the matter which was being discussed in New York and Geneva and with the Swiss authorities in order to find a viable, constructive and lasting solution.

REPORTS OF WORKING GROUPS

Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid, in all countries, with particular reference to colonial and other dependent countries and territories: report of the Sub-Commission under Commission on Human Rights resolution 8 (XXIII) (agenda item 6) (continued) (E/CN.4/Sub.2/1990/14)

37. Mr. van BOVEN, introducing the report, said that the open-ended Working Group established pursuant to Sub-Commission decision 1989/104 had the mandate to prepare an overview and analysis of suggestions and proposals made in order to enable the Sub-Commission to discharge its responsibilities in dealing with violations of human rights and to submit its views and recommendations to the Sub-Commission. In addition, the Commission on Human Rights had invited the Sub-Commission to instruct the Working Group to include in its deliberations an examination of ways and means to avoid any proliferation of studies as well as of draft resolutions or decisions on issues already being dealt with by the Commission.

38. The Working Group had considered those matters and its report might be regarded as a sort of inventory or stock-taking. The stage had not yet been reached at which it had been possible to reach conclusions and recommendations. Basically the report gave an overview of the discussion. As such, he hoped that it would serve a useful purpose for the future.

39. He considered that the Sub-Commission should take note of the report and decide to continue to study the issue at its next session.

40. The CHAIRMAN said that, if there was no objection, he would take it that the Sub-Commission took note of the report of the open-ended Working Group as contained in document E/CN.4/Sub.2/1990/14 without a vote and decided to continue consideration of the matter at its forty-third session.

41. It was so decided.

The administration of justice and the human rights of detainees: question of human rights of persons subjected to any form of detention or imprisonment (agenda item 10) (continued) (E/CN.4/Sub.2/1990/32)

42. The CHAIRMAN said that the main feature of the report of the Working Group on Detention (E/CN.4/Sub.2/1990/32) was the draft Declaration on the protection of all persons from enforced or involuntary disappearance which was contained in the annex to the report and on which the Sub-Commission had already taken action.

43. Mr. HATANO said that he wished very briefly to introduce the other parts of the draft report. The Working Group had met five times and discussed in detail each of the items listed in the agenda contained in paragraph 10 of the report. A summary of the conclusions reached was included under each item of that agenda. The report was self-explanatory.

44. He wished to draw particular attention to the provisional agenda for the next session contained in paragraph 51 of the report; it included such important subjects as habeas corpus and the death penalty.

45. The CHAIRMAN said that, if there was no objection, he would take it that the Sub-Commission took note of the report of the Working Group on Detention (E/CN.4/Sub.2/1990/32).

46. It was so decided.

The right of everyone to leave any country, including his own, and to return to his country (agenda item 19) (continued) (E/CN.4/Sub.2/1990/48)

47. The CHAIRMAN said that the Sub-Commission had already been informed of the work of the Working Group on a draft declaration on freedom and non-discrimination in respect of the right of everyone to leave any country, including his own, and to return to his country.

48. If there was no objection, he would take it that the Sub-Commission took note of the report of the Working Group (E/CN.4/Sub.2/1990/48).

49. It was so decided.

CONSIDERATION OF THE FUTURE WORK OF THE SUB-COMMISSION AND OF THE DRAFT PROVISIONAL AGENDA FOR THE FORTY-THIRD SESSION OF THE SUB-COMMISSION (agenda item 20) (E/CN.4/Sub.2/1990/L.1)

50. The CHAIRMAN indicated that the draft provisional agenda for the forty-third session of the Sub-Commission together with a list of the documents to be submitted under each item was contained in document E/CN.4/Sub.2/1990/L.1. The Sub-Commission was expected to take note of the draft provisional agenda.

51. In reply to a procedural question raised by Mrs. PALLEY, the CHAIRMAN said that the organization of work and the order of priority of items would be taken up at the forty-third session.

52. Mr. EIDE, referring to provisional agenda item 5 (a), under which the proposed joint meeting with the Committee on the Elimination of Racial Discrimination would be considered, said that he had discussed the matter with the Chairman of that Committee and would provide the Chairman with a note on the discussion.

53. The CHAIRMAN said that, if there was no objection, he would take it that the Sub-Commission took note of the draft provisional agenda for the forty-third session contained in document E/CN.4/Sub.2/1990/L.1.

54. It was so decided.

ADOPTION OF THE REPORT ON THE FORTY-SECOND SESSION (agenda item 21)
(E/CN.4/Sub.2/1990/L.10 and Add.1-17, E/CN.4/Sub.2/1990/11 and Add.1-5)

Documents E/CN.4/Sub.2/1990/L.10 and Add 1-7

55. Mr. SABOIA (Rapporteur), introducing the draft reports, said that document E/CN.4/Sub.2/1990/L.11/Add.2 should be amended as follows: in chapter II, B, Decisions: the titles of decisions 1990/108 and 1990/109 should be amended to read "Appeal concerning the situation in the Gulf". The titles of decisions 1990/108 and 1990/109 as they appeared on page 2 should be amended accordingly.

56. In decision 1990/108 the last phrase, reading "and to strongly appeal to all those participating in sanctions against Iraq not to prevent the delivery of necessary food and medicine" should be deleted.

57. Decision 1990/109, also on page 2, should be replaced by the following text: "At its twenty-sixth meeting, on 24 August 1990, the Sub-Commission meeting in closed session decided, without a vote, on the grounds of human rights and humanitarian law, to strongly appeal to all those participating in sanctions against Iraq not to prevent the delivery of necessary foods and medicines. This appeal has been made in the spirit of Security Council resolution 661 of 1990."

58. Mr. ALFONSO MARTINEZ, supported by Mr. Despouy, requested a short suspension of the meeting in order to enable members to study the documentation further.

The meeting was suspended at 4.40 p.m. and resumed at 5.05 p.m.

59. The CHAIRMAN invited the Sub-Commission to vote on the draft report.

60. Documents E/CN.4/Sub.2/1990/L.10 and Add.1-7, as amended, were adopted.

Document E/CN.4/Sub.2/1990/L.10/Add.8

61. Mrs. BAUTISTA proposed that, in document E/CN.4/Sub.2/1990/L.10/Add.8, paragraph 9, the phrase "counted retrospectively from the first day of work of the Working Group on Communications" should be added after the words "a minimum of 12 weeks".

62. Mr. ALFONSO MARTINEZ, supported by Mrs. PALLEY, expressed the view that, in paragraph 4 of the same document, the result of the roll-call vote should have been included.

63. Mr. SABOIA (Rapporteur) said that the vote was taken in closed session and therefore should be reflected in the appropriate part of the report.

64. The CHAIRMAN said that, if there were no objections, he would take it that the Sub-Commission decided to add the result of the vote in paragraph 4.

65. It was so decided.

66. Following a procedural discussion in which Mr. TREAT, Mr. ALFONSO MARTINEZ, Mr. JOINET, Mr. SABOIA, Mr. SACHAR and Mrs. KSENTINI took part, the CHAIRMAN said that paragraph 9 would be clear if it merely reflected the decision that had been taken without any further explanation; otherwise differences in interpretation could arise. He therefore proposed that the wording of paragraph 9 should be brought in line with the exact wording of the decision as taken.

67 Mrs. BAUTISTA said that she agreed with the proposal of the Chairman provided the text of the decision was reproduced exactly.

68. Document E/CN.4/Sub.2/1990/L.10/Add.8, as amended, was adopted.

Documents E/CN.4/Sub.2/1990/L.10/Add.9-17

69. Documents E/CN.4/Sub.2/1990/L.10/Add.9-17 were adopted.

Documents E/CN.4/Sub.2/1990/L.11 and Add.1-5

70. Mr. ALFONSO MARTINEZ, noting that the documents in question were not available in the Spanish version, proposed that the Sub-Commission should take note of them rather than adopt them formally.

71. The CHAIRMAN said that if there was no objection, he would take it that the Sub-Commission wished to follow that course.

72. It was so decided.

73. The Sub-Commission took note of documents E/CN.4/Sub.2/1990/L.11 and Add.1-3.

E/CN.4/Sub.2/1990/L.11/Add.4

74. Mrs. DAES proposed that in paragraph 1 of the draft resolution recommended to the Commission on Human Rights for adoption, the words "the Special Rapporteur," should be added after the word "entrust" in the first line.

75. The Sub-Commission took note of document E/CN.4/Sub.2/1990/L.11/Add.4, as amended.

E/CN.4/Sub.2/1990/L.11/Add.5

76. The Sub-Commission took note of document E/CN.4/Sub.2/1990/L.11/Add.5.

77. Mr. SABOIA (Rapporteur) said that in view of the technical constraints of conference servicing, it had not been possible to include an account of the previous meeting's debate or the voting on draft resolutions at the two previous meetings. He wished to assure the members that those decisions would be duly incorporated into the final report.

78. The CHAIRMAN said that if there was no objection, he would take it that the Sub-Commission agreed to that procedure.

79. It was so decided.

PRE-SESSIONAL WORKING GROUPS

80. The CHAIRMAN, announcing the composition of the pre-sessional working groups, said that, for Africa, Mr. Yimer would act as member and Mr. Ilkahanaf as alternate for the Working Group on Communications; Mrs. Ksentini would act as member and Mr. Guissé as alternate for the Working Group on Slavery; Mrs. Mbonu would act as member for the Working Group on Indigenous Populations.

81. For Asia, Mr. Tian Jin would act as member and Mr. Zhan Daode as alternate for the Working Group on Communications; Mr. Sadi would act as member for the Working Group on Slavery; Mr. Hatano would act as member and Mr. Yokota as alternate for the Working Group on Indigenous Populations.

82. For Latin America, Mr. Heller would act as member and Mr. Despouy as alternate for the Working Group on Communications; Mr. Suescun Monroy would act as member and Mr. Despouy as alternate for the Working Group on Slavery; Mr. Alfonso Martínez would act as member and Mrs. Zelner Gonçalves as alternate for the Working Group on Indigenous Populations.

83. For Eastern Europe, Mr. Ramishvili would act as member for the Working Group on Communincations, Mr. Diaconu for the Working Group on Slavery and Mr. Türk for the Working Group on Indigenous Populations.

84. For Western Europe, Mr. van Boven would act as member and Mr. Treat as alternate for the Working Group on Communications; Mrs. Palley would act as member and Mr. Joinet as alternate for the Working Group on Slavery and Mrs. Daes as member and Mr. Eide as alternate for the Working Group on Indigenous Populations.

85. Mr. JOINET, speaking for Mr. Hatano and himself, thanked the Secretariat for its invaluable help in the preparation of the report of the Working Group on Detention. He would also like to suggest that the practice begun the previous year of asking the Secretariat to provide an informal note containing the addresses of the members should be continued in 1990 to enable members to exchange reactions and views between sessions. Members should also send a copy of the letters exchanged to the Secretary of the Commission on Human Rights.

86. It was so decided.

CLOSURE OF THE SESSION

87. After an exchange of courtesies, the CHAIRMAN declared the forty-second session of the Sub-Commission closed.

The meeting rose at 6.10 p.m.